

7/99

WILLIAM L. ...

STATE AFFAIRS 11654

1 that made the child a child in need of aid under this chapter; [AND]

2 (C) if the permanent plan is for the child to remain in out-of-
3 home-care, whether the child's out-of-home placement continues to be
4 appropriate and in the best interests of the child; and

5 (D) whether the department has made reasonable efforts to
6 finalize the permanent plan for the child;

7 (5) the court shall hold a hearing to review the permanent plan at least
8 annually until successful implementation of the plan; if the plan approved by the court
9 changes after the hearing, the department shall promptly apply to the court for another
10 permanency hearing, and the court shall conduct the hearing within 30 days after
11 application by the department.

12 * Sec. 5. AS 47.10 is amended by adding a new section to read:

13 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
14 **responsibilities.** (a) When a child is committed to the custody of the department
15 under AS 47.10.080(c)(1) or (3) or released under AS 47.10.080(c)(2), the rights of a
16 parent with respect to the child, including parental rights to control the child, to
17 withhold consent to an adoption, or to receive notice of a hearing on a petition for
18 adoption, may be voluntarily relinquished to the department and the relationship of
19 parent and child terminated in a proceeding as provided under this section.

20 (b) A voluntary relinquishment must be in writing and signed by a parent,
21 regardless of the age of the parent, in the presence of a representative of the
22 department or in the presence of a court of competent jurisdiction with the knowledge
23 and approval of the department. A copy of the signed relinquishment shall be given to
24 the parent.

25 (c) A voluntary relinquishment may be withdrawn within 10 days after it is
26 signed. The relinquishment is invalid unless the relinquishment contains the right of
27 withdrawal as specified under this subsection.

28 (d) A parent may retain privileges with respect to the child, including the
29 ability to have future contact, communication, and visitation with the child in a
30 voluntary relinquishment executed under this section. A retained privilege must be in
31 writing and stated with specificity.

1 (e) Not less than 10 days after a voluntary relinquishment is signed, the court
2 shall enter an order terminating parental rights if the court finds that termination of
3 parental rights under the terms of the relinquishment is in the child's best interest. If a
4 parent has retained one or more privileges under (d) of this section, the court shall
5 incorporate the retained privileges in the termination order with a recommendation
6 that the retained privileges be incorporated in an adoption or legal guardianship
7 decree.

8 (f) A voluntary relinquishment may not be withdrawn and a termination order
9 may not be vacated on the ground that a retained privilege has been withheld from the
10 relinquishing parent or that the relinquishing parent has been unable, for any reason, to
11 act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil
12 Procedure.

13 (g) After a termination order is entered and before the entry of an adoption or
14 legal guardianship decree, a party or a parent who has voluntarily relinquished
15 parental rights under this section may request a review hearing, upon a showing of
16 good cause, to seek enforcement or modification of a privilege retained in the
17 termination order. The court may modify or enforce the retained privilege if it is in
18 the best interest of the child to do so.

19 (h) After a termination order is entered and before the entry of an adoption or
20 legal guardianship decree, a parent who voluntarily relinquished parental rights to a
21 child under this section may request a review hearing, upon a showing of good cause,
22 to vacate the termination order and reinstate parental rights relating to that child. A
23 court shall vacate a termination order if the parent shows, by clear and convincing
24 evidence, that reinstatement of parental rights is in the best interest of the child and
25 that the parent is rehabilitated and capable of providing the care and guidance that will
26 serve the moral, emotional, mental, and physical welfare of the child.

27 (i) A parent seeking a review hearing under (g) or (h) of this section is entitled
28 to the appointment of an attorney to the same extent as if the parent's rights had not
29 been terminated in a child-in-need-of-aid proceeding."
30

31 Renumber the following bill sections accordingly.

1

2 Page 4, following line 17:

3 Insert a new bill section to read:

4 **** Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:6 **DIRECT COURT RULE AMENDMENT.** Rule 9(g), Alaska Adoption Rules,
7 is amended to read:8 **(g) Withdrawal of Consent or Relinquishment of a Non-Indian Child.**9 The parent of a non-Indian child may withdraw a consent or relinquishment by
10 notifying in writing the court, or the person or agency obtaining the consent or
11 relinquishment, within 10 days of the birth or signing of the consent or
12 relinquishment, whichever is later. Notification is timely if received or postmarked on
13 or before the last day of this time period. The parent may move the court to permit
14 withdrawal of the consent or relinquishment after the 10 day period pursuant to
15 AS 25.23.070 for a consent or AS 25.23.180(g) or AS 47.10.089(h) for a
16 relinquishment."
17

17

18 Renumber the following bill sections accordingly

19

20 Page 4, line 23, following "AS 25.23.180":

21 Insert "or AS 47.10.089"

22

23 Page 4, line 25:

24 Delete "AS 25.23.180, whether"

25

26 Page 4, line 26:

27 Delete "AS 25.23.180"28 Insert "AS 47.10.089"

29

30 Page 5, following line 5:

31 Insert new bill sections to read:

1 ** Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need
4 of Aid Rule, is amended to read:

5 (f) **Additional Findings.** In addition to the findings required under paragraph
6 (e), the court shall also make written findings related to

7 (1) whether the Department has made reasonable efforts required
8 under AS 47.10.086 or, in the case of an Indian child, whether the Department has
9 made active efforts to provide remedial services and rehabilitative programs as
10 required by 25 U.S.C. Sec. 1912(d);

11 (2) whether the parent or guardian has made substantial progress to
12 remedy the parent's or guardian's conduct or conditions in the home that made the
13 child a child in need of aid; [AND]

14 (3) if the permanent plan is for the child to remain in out-of-home care,
15 whether the child's out-of-home placement continues to be appropriate and in the best
16 interests of the child; and

17 (4) whether the Department has made reasonable efforts to finalize
18 the permanent plan for the child.

19 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in
22 Need of Aid Rules, is amended to read:

23 (d) **Relinquishment.**

24 (1) Notwithstanding other provisions of this rule, the court may
25 terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089
26 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
27 requirements set forth in 25 U.S.C. § 1913(c)."

28
29 Renumber the following bill sections accordingly.

30
31 Page 5, line 8:

1 Delete "AS 25.23.180(j), added by sec. 1"

2 Insert "AS 47.10.089(e), added by sec. 5"

3

4 Page 5, line 11:

5 Delete "AS 25.23.180(k), added by sec. 1"

6 Insert "AS 47.10.089(g) and (h), added by sec. 5"

7 Delete "amends"

8 Insert "amend"

9

10 Page 5, following line 13:

11 Insert new material to read:

12 "(c) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18(d)(1), Alaska Child in
13 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for the
14 withdrawal of the relinquishment, allowing for the retention of certain privileges, and
15 authorizing a review hearing before the entry of an adoption or legal guardianship decree.

16 (d) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18, Alaska Child in Need
17 of Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or
18 legal guardianship decree.

19 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
22 heading of AS 47.10.088 from "Termination of parental rights and responsibilities." to
23 "involuntary termination of parental rights and responsibilities.""

24

25 Renumber the following bill sections accordingly.

26

27 Page 5, line 17:

28 Delete the first occurrence of "sec. 8"

29 Insert "sec. 9"

30

31 Delete "only if sec. 8"

1 Insert "only if sec. 9"

2

3 Page 5, following line 18:

4 Insert a new subsection to read:

5 "(b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 10 of this Act, takes effect
6 only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art.
7 IV, sec. 15, Constitution of the State of Alaska."

8

9 Reletter the following subsections accordingly.

10

11 Page 5, line 19:

12 Delete "9"

13 Insert "11"

14

15 Page 5, line 20:

16 Delete "9"

17 Insert "11"

18

19 Page 5, following line 21:

20 Insert new subsections to read:

21 "(d) Section 4 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
22 amended by sec. 12 of this Act, take effect only if sec. 12 of this Act receives the two-thirds
23 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

24 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 13 of this
25 Act, takes effect only if sec. 13 of this Act receives the two-thirds majority vote of each house
26 required by art. IV, sec. 15, Constitution of the State of Alaska."

27

28 Reletter the following subsection accordingly.

29

30 Page 5, line 22:

31 Delete "AS 25.23.180(j) and (k), added by sec. 1 of this Act, take effect only if sec.

1 10"

2 Insert "AS 47.10.089, added by sec. 5 of this Act, takes effect only if sec. 14"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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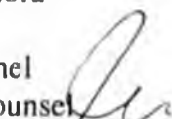
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 28, 2005

SUBJECT: Child Protection (HB 114 (Work Order No. 24-GH1108G))

TO: Representative Paul Seaton
Attn: Louie Flora

FROM: Jean M. Mischel
Legislative Counsel 

You have asked whether any legal or drafting problems exist with HB 114. Attached is CSHB 114() making technical corrections in compliance with the drafting manual.

I have identified one potential legal issue that is raised by section 5 of the bill that allows a court to take judicial notice of what an expert witness would testify to with respect to the effect of continued custody by an absent parent, guardian, or custodian. That section provides

Sec. 47.10.145. Expert witness testimony regarding absent parent, guardian, or custodian. If the court finds by clear and convincing evidence that a parent, guardian, or custodian of a child cannot be located after a reasonable search for the parent, guardian, or custodian has been conducted by the department, the court may conclude that the testimony of a qualified expert witness would support a finding that continued custody of the child by the absent parent, guardian, or custodian is likely to result in serious emotional or physical damage to the child.

To the extent that this procedure is used to support a petition to terminate parental rights by the department in a case involving a native child, there is a question as to the consistency with the Indian Child Welfare Act, 25 U.S.C. sec. 1912(f) which requires the support of testimony of a qualified expert witness. That section provides that:

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, **including testimony of qualified expert witnesses**, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (emphasis added)

Representative Paul Seaton
February 28, 2005
Page 2

It may be that judicial notice of expert witness testimony would satisfy ICWA in cases involving native children, particularly with a heightened standard. Section 5 does not, however, meet a literal or conservative interpretation of ICWA.

In addition, I have added what our office has identified as a direct court rule amendment to the Adoption Rules created by section 1. Changes have been made in this version in the title and by new sections 8 and 9.

If I may be of further assistance, please advise.

JMM:med
05-124.med

Enclosure

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HOUSE BILL NO. 114

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/26/05

Referred: State Affairs, Health, Education and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the retaining of certain privileges of a parent in a relinquishment
2 and termination of a parent and child relationship proceeding; relating to eligibility for
3 permanent fund dividends for certain children in the custody of the state; relating to
4 child in need of aid proceedings and juvenile delinquency proceedings; and providing
5 for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 * Section 1. AS 25.23.180 is amended by adding a new subsection to read:

8 (j) In a relinquishment of parental rights executed under (a) of this section, a
9 parent may retain privileges with respect to the child, including the ability to have
10 future contact, communication, and visitation with the child. A retained privilege
11 must be stated with specificity in the writing and, if a termination order is entered
12 following the relinquishment, the court shall incorporate a retained privilege into the
13 termination order. A relinquishment may not be withdrawn or invalidated, nor may a

1 termination order be vacated, on the grounds that a retained privilege has been
 2 withheld from the relinquishing parent or that the relinquishing parent has been
 3 unable, for any reason, to act upon a retained privilege.

4 * Sec. 2. AS 43.03.005(f) is amended to read:

5 (f) The [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
 6 commissioner may waive the requirement of (a)(4) of this section for an individual
 7 absent from the state

8 (1) in a time of national military emergency under military orders
 9 while serving in the armed forces of the United States, or for the spouse and
 10 dependents of that individual; or

11 (2) while in the custody of the Department of Health and Social
 12 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed
 13 outside of the state by the Department of Health and Social Services for purposes
 14 of medical or behavioral treatment.

15 * Sec. 3. AS 47.10.020(a) is amended to read:

16 (a) Whenever circumstances subject a child to the jurisdiction of the court
 17 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
 18 to make a preliminary inquiry and report for the information of the court to determine
 19 whether the best interests of the child require that further action be taken. The court
 20 shall make the appointment on its own motion or at the request of a person or
 21 agency having knowledge of the child's circumstances. If, under this subsection,
 22 the court appoints a person or agency to make a preliminary inquiry and to report to it,
 23 or if the department is conducting an investigation of a report of child abuse or
 24 neglect, the court may issue any orders necessary to aid the person, the agency,
 25 or the department in its investigation or in making the preliminary inquiry and
 26 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
 27 court may

28 (1) close the matter without a court hearing;

29 (2) determine whether the best interests of the child require that further
 30 action be taken; or

31 (3) authorize the person or agency having knowledge of the facts of the

1 case to file with the court a petition setting out the facts.

2 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

3 (e) Nothing in this section requires the department to obtain authorization
4 from the court before:

- 5 (1) conducting an investigation of a report of child abuse or neglect; or
6 (2) filing a petition.

7 * Sec. 5. AS 47.10 is amended by adding a new section to read:

8 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
9 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
10 parent, guardian, or custodian of a child cannot be located after a reasonable search for
11 the parent, guardian, or custodian has been conducted by the department, the court
12 may conclude that the testimony of a qualified expert witness would support a finding
13 that continued custody of the child by the absent parent, guardian, or custodian is
14 likely to result in serious emotional or physical damage to the child.

15 * Sec. 6. AS 47.10.990(16) is amended to read:

16 (16) "mental health professional" has the meaning given in
17 AS 47.30.915, except that if the child is placed in another state by the department,
18 "mental health professional" also includes a professional listed in the definition
19 of "mental health professional" in AS 47.30.915 who is not licensed to practice by
20 a board of this state but is licensed by a corresponding licensing authority to
21 practice in the state in which the child is placed.

22 * Sec. 7. AS 47.12.990(10) is amended to read:

23 (10) "mental health professional" has the meaning given in
24 AS 47.30.915, except that, if the minor is placed in another state by the
25 department, "mental health professional" also includes a professional listed in
26 the definition of "mental health professional" in AS 47.30.915 who is not licensed
27 to practice by a board of this state but is licensed by a corresponding licensing
28 authority to practice in the state in which the minor is placed.

29 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

LEGAL SERVICES

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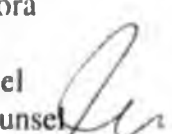
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Attn: Louie Flora

FROM: Jean M. Mischel
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I have identified one potential legal issue that is raised by section 5 of the bill that allows a court to take judicial notice of what an expert witness would testify to with respect to the effect of continued custody by an absent parent, guardian, or custodian. That section provides

Sec. 47.10.145. Expert witness testimony regarding absent parent, guardian, or custodian. If the court finds by clear and convincing evidence that a parent, guardian, or custodian of a child cannot be located after a reasonable search for the parent, guardian, or custodian has been conducted by the department, the court may conclude that the testimony of a qualified expert witness would support a finding that continued custody of the child by the absent parent, guardian, or custodian is likely to result in serious emotional or physical damage to the child.

To the extent that this procedure is used to support a petition to terminate parental rights by the department in a case involving a native child, there is a question as to the consistency with the Indian Child Welfare Act, 25 U.S.C. sec. 1912(f) which requires the support of testimony of a qualified expert witness. That section provides that:

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, **including testimony of qualified expert witnesses**, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. (emphasis added)

Representative Paul Seaton

February 28, 2005

Page 2

It may be that judicial notice of expert witness testimony would satisfy ICWA in cases involving native children, particularly with a heightened standard. Section 5 does not, however, meet a literal or conservative interpretation of ICWA.

In addition, I have added what our office has identified as a direct court rule amendment to the Adoption Rules created by section 1. Changes have been made in this version in the title and by new sections 8 and 9.

If I may be of further assistance, please advise.

JMM.med

05-124.med

Enclosure

24 GH1108\G
Mischel
2/28/05

CS FOR HOUSE BILL NO. 114()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the retaining of certain privileges of a parent in a relinquishment
2 and termination of a parent and child relationship proceeding; relating to eligibility for
3 permanent fund dividends for certain children in the custody of the state; relating to
4 child-in-need-of-aid proceedings and juvenile delinquency proceedings; amending Rules
5 9 and 13, Alaska Adoption Rules; and providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** AS 25.23.180 is amended by adding a new subsection to read:

8 (j) In a relinquishment of parental rights executed under (a) of this section, a
9 parent may retain privileges with respect to the child, including the ability to have
10 future contact, communication, and visitation with the child. A retained privilege
11 must be stated with specificity in writing, and, if a termination order is entered
12 following the relinquishment, the court shall incorporate a retained privilege into the
13 termination order. A relinquishment may not be withdrawn or invalidated, and a

*retain a privilege but
is not enforceable*

1 termination order may not be vacated, on the grounds that a retained privilege has
2 been withheld from the relinquishing parent or that the relinquishing parent has been
3 unable, for any reason, to act upon a retained privilege.

4 * Sec. 2. AS 43.23.005(f) is amended to read:

5 (f) The [IN A TIME OF NATIONAL MILITARY EMERGENCY, THE]
6 commissioner may waive the requirement of (a)(4) of this section for an individual
7 absent from the state

8 (1) in a time of national military emergency under military orders
9 while serving in the armed forces of the United States, or for the spouse and
10 dependents of that individual; or

11 (2) while in the custody of the Department of Health and Social
12 Services in accordance with a court order under AS 47.10 or AS 47.12 and placed
13 outside of the state by the Department of Health and Social Services for purposes
14 of medical or behavioral treatment.

15 * Sec. 3. AS 47.10.020(a) is amended to read:

16 (a) Whenever circumstances subject a child to the jurisdiction of the court
17 under AS 47.10.005 - 47.10.142, the court shall appoint a competent person or agency
18 to make a preliminary inquiry and report for the information of the court to determine
19 whether the best interests of the child require that further action be taken. The court
20 shall make the appointment on its own motion or at the request of a person or
21 agency having knowledge of the child's circumstances. If, under this subsection,
22 the court appoints a person or agency to make a preliminary inquiry and to report to it,
23 or if the department is conducting an investigation of a report of child abuse or
24 neglect, the court may issue any orders necessary to aid the person, the agency,
25 or the department in its investigation or in making the preliminary inquiry and
26 report. Upon [THEN, UPON THE] receipt of the report under this subsection, the
27 court may

28 (1) close the matter without a court hearing;

29 (2) determine whether the best interests of the child require that further
30 action be taken; or

31 (3) authorize the person or agency having knowledge of the facts of the

PF-D

1 case to file with the court a petition setting out the facts.

2 * Sec. 4. AS 47.10.020 is amended by adding a new subsection to read:

3 (e) Nothing in this section requires the department to obtain authorization
4 from the court before

5 (1) conducting an investigation of a report of child abuse or neglect; or

6 (2) filing a petition.

7 * Sec. 5. AS 47.10 is amended by adding a new section to read:

8 **Sec. 47.10.145. Expert witness testimony regarding absent parent,**
9 **guardian, or custodian.** If the court finds by clear and convincing evidence that a
10 parent, guardian, or custodian of a child cannot be located after a reasonable search for
11 the parent, guardian, or custodian has been conducted by the department, the court
12 may conclude that the testimony of a qualified expert witness would support a finding
13 that continued custody of the child by the absent parent, guardian, or custodian is
14 likely to result in serious emotional or physical damage to the child.

15 * Sec. 6. AS 47.10.990(16) is amended to read:

16 (16) "mental health professional" has the meaning given in
17 AS 47.30.915, except that, if the child is placed in another state by the
18 department, "mental health professional" also includes a professional listed in
19 the definition of "mental health professional" in AS 47.30.915 who is not licensed
20 to practice by a board of this state but is licensed by a corresponding licensing
21 authority to practice in the state in which the child is placed;

22 * Sec. 7. AS 47.12.990(10) is amended to read:

23 (10) "mental health professional" has the meaning given in
24 AS 47.30.915, except that, if the minor is placed in another state by the
25 department, "mental health professional" also includes a professional listed in
26 the definition of "mental health professional" in AS 47.30.915 who is not licensed
27 to practice by a board of this state but is licensed by a corresponding licensing
28 authority to practice in the state in which the minor is placed;

29 * Sec. 8. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 DIRECT COURT RULE AMENDMENT. Rule 9(a), Alaska Adoption Rules,

1 is amended to read:

2 (a) **Form.** A consent or relinquishment must be in writing and must include:

3 (1) notice of the person's right to withdraw the consent or
4 relinquishment as provided by paragraphs (g) and (h) of this rule;

5 (2) the address and telephone number of the court in which the
6 adoption or relinquishment proceeding has or is expected to be filed;

7 (3) a statement of the right to counsel as stated in Rule 8;

8 (4) a statement concerning whether or not any visitation rights or
9 other parental privileges are sought to be retained after the adoption;

10 (5) if a consent, the information required in AS 25.23.060; and

11 (6) if signed by a parent, a statement of whether the parent is a minor.

12 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 DIRECT COURT RULE AMENDMENT. Rule 13(a), Alaska Adoption
15 Rules, is amended to read

16 (a) **Voluntary Relinquishment.** A decree terminating parental rights may be
17 entered after a voluntary relinquishment pursuant to AS 25.23.180. The court shall
18 enter findings of fact which must include a statement concerning whether visitation
19 rights are being allowed under AS 25.23.130(c) or AS 25.23.180 whether other
20 privileges are being retained under AS 25.23.180. and whether the time limit for
21 withdrawal of the relinquishment has elapsed. If the relinquishment was signed in the
22 presence of the court, findings also must be entered as to whether the parent
23 understood the consequences of the relinquishment, and whether the relinquishment
24 was voluntarily signed.

25 In the case of a voluntary relinquishment of parental rights to an Indian child,
26 the court shall make additional findings concerning whether any notice required by
27 Rule 10(e) was timely given; whether the relinquishment was voluntary and in
28 compliance with the requirements of 25 U.S.C. Section 1913; and whether the child's
29 placement complies with the preferences set out in 25 U.S.C. Section 1915 or good
30 cause exists for deviation from the placement preference.

31 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 **INDIRECT COURT RULE AMENDMENT.** AS 25.23.180(j), added by sec. 1 of this
3 Act, amends Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set
4 out in the relinquishment form and order.

5 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 **CONDITIONAL EFFECT.** (a) Rule 9(a), Alaska Adoption Rules, as amended by
8 sec. 8 of this Act, takes effect only if sec. 8 of this Act receives the two-thirds majority vote of
9 each house required by art. IV, sec. 15, Constitution of the State of Alaska.

10 (b) Rule 13(a), Alaska Adoption Rules, as amended by sec. 9 of this Act, takes effect
11 only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art.
12 IV, sec. 15, Constitution of the State of Alaska.

13 (c) AS 25.23.180(j), added by sec. 1 of this Act, takes effect only if sec. 10 of this Act
14 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
15 of the State of Alaska.

16 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS
COMMITTEE

BY _____

TO: CSHB 114() (24-GH1108F) (3/8/05 Work Draft)

1 Page 1, line 1:

2 Delete "the retaining of certain privileges of a parent in a"

3 Insert "proceedings regarding voluntary"

4

5 Page 1, line 2:

6 Delete "proceeding"

7

8 Page 1, line 4:

9 Delete ", adoption proceedings,"

10

11 Page 1, line 5, following "Rules":

12 Insert ", and Rule 18, Child in Need of Aid Rules"

13

14 Page 1, line 8, through page 2, line 9:

15 Delete all material.

16

17 Renumber the following bill sections accordingly.

18

19 Page 3, following line 12:

20 Insert a new bill section to read.

21 **** Sec. 4.** AS 47.10 is amended by adding a new section to read:

1 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
2 **responsibilities.** (a) The rights of a parent with reference to a child, including parental
3 right to control the child, to withhold consent to an adoption, or to receive notice of a
4 hearing on a petition for adoption, may be relinquished to the department and the
5 relationship of parent and child terminated in a proceeding as provided in this section.

6 (b) A relinquishment must be in writing, signed by a parent, regardless of the age
7 of the parent, in the presence of a representative of the department or in the presence of a
8 court of competent jurisdiction with the knowledge and approval of the department. A
9 copy of the signed relinquishment shall be given to the parent.

10 (c) A relinquishment may be withdrawn within 10 days after it is signed. The
11 relinquishment is invalid unless it states that the parent has the right of withdrawal under
12 this subsection.

13 (d) In a relinquishment of parental rights executed under this section, a parent
14 may retain privileges with respect to the child, including the ability to have future
15 contact, communication, and visitation with the child. A retained privilege must be in
16 writing and stated with specificity.

17 (e) Not sooner than 10 days after a relinquishment is signed, the court shall enter
18 an order terminating parental rights if the court determines that termination of parental
19 rights under the terms of the relinquishment is in the child's best interests. If a parent has
20 retained any privileges under (d) of this section, the court shall incorporate the retained
21 privileges into the termination order with a recommendation that they be incorporated
22 into an adoption or legal guardianship decree.

23 (f) A relinquishment may not be withdrawn and a termination order may not be
24 vacated on the ground that a retained privilege has been withheld from the relinquishing
25 parent or that the relinquishing parent has been unable, for any reason, to act upon a
26 retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil
27 Procedure.

28 (g) After a termination order is entered, but before the entry of an adoption or
29 legal guardianship decree, a party or a parent who has voluntarily relinquished parental
30 rights under this section may request a review hearing, upon a showing of good cause, to
31 seek enforcement or modification of a privilege retained in the termination order. The

1 court may modify or enforce the retained privilege if it is in the best interests of the child
2 to do so.

3 (h) After a termination order is entered, but before the entry of an adoption or
4 legal guardianship decree, a parent who voluntarily relinquished parental rights to a child
5 under this section may request a review hearing, upon a showing of good cause, to vacate
6 the termination order and reinstate parental rights relating to that child. A court shall
7 vacate a termination order if the parent shows by clear and convincing evidence that
8 reinstatement of parental rights is in the best interests of the child and that the parent is
9 rehabilitated and capable of providing the care and guidance that will serve the moral,
10 emotional, mental, and physical welfare of the child.

11 (i) A parent seeking a review hearing under (g) or (h) of this section is entitled to
12 the appointment of an attorney to the same extent as if the parent's rights had not been
13 terminated."

14
15 Renumber the following bill sections accordingly.

16
17 Page 4, following line 17:

18 Insert a new bill section to read:

19 "** Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules, is
22 amended to read:

23 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The
24 parent of a non-Indian child may withdraw a consent or relinquishment by notifying in
25 writing the court, or the person or agency obtaining the consent or relinquishment, within
26 10 days of the birth or signing of the consent or relinquishment, whichever is later.
27 Notification is timely if received or postmarked on or before the last day of this time
28 period. The parent may move the court to permit withdrawal of the consent or
29 relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent
30 or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment."
31

1 Renumber the following bill sections accordingly.

2

3 Page 4, line 23 following "AS 25.23.180":

4 Insert "or AS 47.10.089"

5

6 Page 4, line 25:

7 Delete "AS 25.23.180, whether"

8

9 Page 4, line 26:

10 Delete "AS 25.23.180"

11 Insert "AS 47.10.089"

12

13 Page 5, following line 5:

14 Insert a new bill section to read:

15 "* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Child in Need of Aid
18 Rules, is amended to read:

19 (d) **Relinquishment.**

20 (1) Notwithstanding other provisions of this rule, the court may terminate
21 parental rights after voluntary relinquishment pursuant to AS 47.10.089 [AS 25.23.180].
22 In the case of an Indian child, the relinquishment must meet the requirements set forth in
23 25. U.S.C. sec. 1913(c)."

24

25 Renumber the following bill sections accordingly.

26

27 Page 5, line 8:

28 Delete "AS 25.23.180(j), added by sec. 1"

29 Insert "AS 47.10.089(i), added by sec. 4"

30

31 Page 5, line 11:

1 Delete "AS 25.23.180(k), added by sec. 1"
2 Insert "AS 47.10.089(g) and (h), added by sec. 4"

3
4 Delete "amends"
5 Insert "amend"

6
7 Page 5, following line 13:

8 Insert the following new material:

9 "(c) AS 47.10.089, added by sec. 4 of this Act, amends Rule 18(d)(1), Child in Need of
10 Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of the
11 relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing
12 before the entry of an adoption or legal guardianship decree.

13 (d) AS 47.10.089, added by sec. 4 of this Act, amends Rule 18, Child in Need of Aid
14 Rules, by authorizing a review hearing for a termination before entry of an adoption or legal
15 guardianship decree.

16 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading
19 of AS 47.10.088 from "Sec. 47.10.088. Termination of parental rights and responsibilities" to
20 "Sec. 47.10.088. Involuntary termination of parental rights and responsibilities.""

21
22 Renumber the following bill sections accordingly.

23
24 Page 5, following line 18:

25 Insert the following new material:

26 "(b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 9 of this Act, takes effect
27 only if sec. 9 of this Act receives the two-thirds majority vote of each house required by art. IV,
28 sec. 15, Constitution of the State of Alaska."

29
30 Page 5, line 19:

31 Delete "(b)"

1 Insert "(c)"
2
3 Delete "9"
4 Insert "10"
5 Page 5, line 20:
6 Delete "9"
7 Insert "10"
8
9 Page 5, following line 21:
10 Insert the following new material:
11 "(d) Rule 18(d)(i), Child in Need of Aid Rules, as amended by sec. 11 of this Act, takes
12 effect only if sec. 11 of this Act receives the two-thirds majority vote of each house required by
13 art. IV, sec. 15, Constitution of the State of Alaska."
14
15 Page 5, line 22:
16 Delete "(c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take"
17 Insert "(e) AS 47.10.089, added by sec. 4 of this Act, takes"
18
19 Delete "10"
20 Insert "12"

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS

BY _____

COMMITTEE

TO: CSHB 114() (24-GH1108\F) (3/8/05 Work Draft)

1 Page 1, line 5, following "proceedings;":

2 Insert "relating to findings in permanency hearings in child in need of aid
3 proceedings; amending Rule 17.2, Alaska Child in Need of Aid Rules;"

4

5 Page 3, following line 12:

6 Insert a new bill section to read:

7 **** Sec. 5.** AS 47.10.080(*l*) is amended to read:

8 (*l*) Within 12 months after the date a child enters foster care as calculated under
9 AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent
10 plan developed in the hearing are governed by the following provisions:

11 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of
12 this section are also entitled to be heard at the hearing held under this section;

13 (2) when establishing the permanent plan for the child, the court shall
14 make appropriate written findings, including findings related to whether

15 (A) and when the child should be returned to the parent or
16 guardian;

17 (B) the child should be placed for adoption or legal guardianship
18 and whether a petition for termination of parental rights should be filed by the
19 department; and

20 (C) the child should be placed in another planned, permanent
21 living arrangement and what steps are necessary to achieve the new arrangement;

1 (3) if the court is unable to make a finding required under (2) of this
2 subsection, the court shall hold another hearing within a reasonable period of time;

3 (4) in addition to the findings required by (2) of this subsection, the court
4 shall also make appropriate written findings related to

5 (A) whether the department has made the reasonable efforts
6 required under AS 47.10.086 to offer appropriate family support services to
7 remedy the parent's or guardian's conduct or conditions in the home that made the
8 child a child in need of aid under this chapter;

9 (B) whether the parent or guardian has made substantial progress
10 to remedy the parent's or guardian's conduct or conditions in the home that made
11 the child a child in need of aid under this chapter; [AND]

12 (C) if the permanent plan is for the child to remain in out-of-home
13 care, whether the child's out-of-home placement continues to be appropriate and
14 in the best interests of the child; and

15 (D) whether the department has made reasonable efforts to
16 finalize the permanent plan for the child;

17 (5) the court shall hold a hearing to review the permanent plan at least
18 annually until successful implementation of the plan; if the plan approved by the court
19 changes after the hearing, the department shall promptly apply to the court for another
20 permanency hearing, and the court shall conduct the hearing within 30 days after
21 application by the department."
22

23 Renumber the following bill sections accordingly.
24

25 Page 5, following line 5:

26 Insert a new bill section to read:

27 **** Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **DIRECT COURT RULE AMENDMENT.** Rule 17.2(f), Alaska Child in Need of
30 Aid Rules, is amended to read:

31 (f) **Additional Findings.** In addition to the findings required under paragraph

1 (e), the court shall also make written findings related to

2 (1) whether the Department has made reasonable efforts required under
3 AS 47.10.086 or, in the case of an Indian child, whether the Department has made active
4 efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C.
5 Sec. 1912(d);

6 (2) whether the parent or guardian has made substantial progress to
7 remedy the parent's or guardian's conduct or conditions in the home that made the child a
8 child in need of aid; [AND]

9 (3) if the permanent plan is for the child to remain in out-of-home care,
10 whether the child's out-of-home placement continues to be appropriate and in the best
11 interests of the child; and

12 (4) whether the Department has made reasonable efforts to finalize
13 the permanent plan for the child."

14
15 Renumber the following bill sections accordingly.

16
17 Page 5, line 17:

18 Delete "sec. 8"

19 Insert "sec. 9"

20
21 Delete "only if sec. 8"

22 Insert "only if sec. 9"

23
24 Page 5, line 19:

25 Delete "9"

26 Insert "10"

27
28 Page 5, line 20:

29 Delete "9"

30 Insert "10"

31

1 Page 5, line 22:

2 Delete "10"

3 Insert "12"

4

5 Page 5, following line 24:

6 Insert the following new material:

7 "(d) Section 5 of this Act takes effect only if sec. 11 of this Act receives the two-thirds
8 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

24G-1
3/4/2005
(11:23 AM)

A M E N D M E N T

OFFERED IN THE HOUSE STATE
AFFAIRS COMMITTEE

BY _____

TO: CSHB 114() (24-GH1108\G Work Draft 2/28/05)

1 Page 1, lines 1 - 2:

2 Delete "relating to the retaining of certain privileges of a parent in a relinquishment
3 and termination of a parent and child relationship proceeding;"

4

5 Page 1, lines 4 - 5:

6 Delete "amending Rules 9 and 13, Alaska Adoption Rules;"

7

8 Page 1, line 7 through page 2, line 3:

9 Delete all material.

10

11 Renumber the following bill sections accordingly.

12

13 Page 3, lines 7 - 14:

14 Delete all material.

15

16 Renumber the following bill sections accordingly.

17

18 Page 3, line 29 through page 5, line 15:

19 Delete all material.

20

21 Renumber the remaining bill section accordingly.

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Greenberg: Delete Section line 13 Page 1 thyl
Page 2 line 3

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Ref: Olson, synopsis + disagreements??

Phone # 5 -

→ Carter call

Diana,
Linda,
Barbara

Will be available

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→ Diana Olson
supports delay Sec. 5

AMENDMENT

OFFERED IN THE HOUSE STATE AFFAIRS

BY _____

COMMITTEE

TO: CSHB 114() (24-GH1108\F) (3/8/05 Work Draft)

- 1 Page 1, line 1:
- 2 Delete "the retaining of certain privileges of a parent in a"
- 3 Insert "proceedings regarding voluntary"
- 4
- 5 Page 1, line 2:
- 6 Delete "proceeding"
- 7
- 8 Page 1, line 4:
- 9 Delete ", adoption proceedings,"
- 10
- 11 Page 1, line 5, following "proceedings;":
- 12 Insert "relating to findings in permanency hearings in child in need of aid
- 13 proceedings;"
- 14
- 15 Page 1, line 5, following "Adoption Rules":
- 16 Insert ", and Rules 17.2 and 18, Alaska Child in Need of Aid Rules"
- 17
- 18 Page 1, line 8, through page 2, line 9:
- 19 Delete all material.
- 20
- 21 Renumber the following bill sections accordingly.

1 Page 3, following line 12:

2 Insert new bill sections to read:

3 ** Sec. 4. AS 47.10.080(l) is amended to read:

4 (l) Within 12 months after the date a child enters foster care as calculated under
5 AS 47.10.088(f), the court shall hold a permanency hearing. The hearing and permanent
6 plan developed in the hearing are governed by the following provisions:

7 (1) the persons entitled to be heard under AS 47.10.070 or under (f) of
8 this section are also entitled to be heard at the hearing held under this section;

9 (2) when establishing the permanent plan for the child, the court shall
10 make appropriate written findings, including findings related to whether

11 (A) and when the child should be returned to the parent or
12 guardian;

13 (B) the child should be placed for adoption or legal guardianship
14 and whether a petition for termination of parental rights should be filed by the
15 department; and

16 (C) the child should be placed in another planned, permanent
17 living arrangement and what steps are necessary to achieve the new arrangement;

18 (3) if the court is unable to make a finding required under (2) of this
19 subsection, the court shall hold another hearing within a reasonable period of time;

20 (4) in addition to the findings required by (2) of this subsection, the court
21 shall also make appropriate written findings related to

22 (A) whether the department has made the reasonable efforts
23 required under AS 47.10.086 to offer appropriate family support services to
24 remedy the parent's or guardian's conduct or conditions in the home that made the
25 child a child in need of aid under this chapter;

26 (B) whether the parent or guardian has made substantial progress
27 to remedy the parent's or guardian's conduct or conditions in the home that made
28 the child a child in need of aid under this chapter; [AND]

29 (C) if the permanent plan is for the child to remain in out-of-home
30 care, whether the child's out-of-home placement continues to be appropriate and
31 in the best interests of the child; **and**

1 **(D) whether the department has made reasonable efforts to**
2 **finalize the permanent plan for the child;**

3 (5) the court shall hold a hearing to review the permanent plan at least
4 annually until successful implementation of the plan; if the plan approved by the court
5 changes after the hearing, the department shall promptly apply to the court for another
6 permanency hearing, and the court shall conduct the hearing within 30 days after
7 application by the department.

8 * Sec. 5. AS 47.10 is amended by adding a new section to read:

9 **Sec. 47.10.089. Voluntary relinquishment of parental rights and**
10 **responsibilities.** (a) The rights of a parent with reference to a child, including parental
11 right to control the child, to withhold consent to an adoption, or to receive notice of a
12 hearing on a petition for adoption, may be relinquished to the department and the
13 relationship of parent and child terminated in a proceeding as provided in this section.

14 (b) A relinquishment must be in writing, signed by a parent, regardless of the age
15 of the parent, in the presence of a representative of the department or in the presence of a
16 court of competent jurisdiction with the knowledge and approval of the department. A
17 copy of the signed relinquishment shall be given to the parent.

18 (c) A relinquishment may be withdrawn within 10 days after it is signed. The
19 relinquishment is invalid unless it states that the parent has the right of withdrawal under
20 this subsection.

21 (d) In a relinquishment of parental rights executed under this section, a parent
22 may retain privileges with respect to the child, including the ability to have future
23 contact, communication, and visitation with the child. A retained privilege must be in
24 writing and stated with specificity.

25 (e) Not sooner than 10 days after a relinquishment is signed, the court shall enter
26 an order terminating parental rights if the court determines that termination of parental
27 rights under the terms of the relinquishment is in the child's best interests. If a parent has
28 retained any privileges under (d) of this section, the court shall incorporate the retained
29 privileges into the termination order with a recommendation that they be incorporated
30 into an adoption or legal guardianship decree.

31 (f) A relinquishment may not be withdrawn and a termination order may not be

1 vacated on the ground that a retained privilege has been withheld from the relinquishing
2 parent or that the relinquishing parent has been unable, for any reason, to act upon a
3 retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil
4 Procedure.

5 (g) After a termination order is entered, but before the entry of an adoption or
6 legal guardianship decree, a party or a parent who has voluntarily relinquished parental
7 rights under this section may request a review hearing, upon a showing of good cause, to
8 seek enforcement or modification of a privilege retained in the termination order. The
9 court may modify or enforce the retained privilege if it is in the best interests of the child
10 to do so.

11 (h) After a termination order is entered, but before the entry of an adoption or
12 legal guardianship decree, a parent who voluntarily relinquished parental rights to a child
13 under this section may request a review hearing, upon a showing of good cause, to vacate
14 the termination order and reinstate parental rights relating to that child. A court shall
15 vacate a termination order if the parent shows by clear and convincing evidence that
16 reinstatement of parental rights is in the best interests of the child and that the parent is
17 rehabilitated and capable of providing the care and guidance that will serve the moral,
18 emotional, mental, and physical welfare of the child.

19 (i) A parent seeking a review hearing under (g) or (h) of this section is entitled to
20 the appointment of an attorney to the same extent as if the parent's rights had not been
21 terminated."
22

23 Renumber the following bill sections accordingly.
24

25 Page 4, following line 17:

26 Insert a new bill section to read:

27 "* Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules, is
30 amended to read:

1 (g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The
2 parent of a non-Indian child may withdraw a consent or relinquishment by notifying in
3 writing the court, or the person or agency obtaining the consent or relinquishment, within
4 10 days of the birth or signing of the consent or relinquishment, whichever is later.
5 Notification is timely if received or postmarked on or before the last day of this time
6 period. The parent may move the court to permit withdrawal of the consent or
7 relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent
8 or AS 25.23.180(g) or AS 47.10.089(h) for a relinquishment."
9

10 Renumber the following bill sections accordingly.

11
12 Page 4, line 23, following "AS 25.23.180":

13 Insert "or AS 47.10.089"

14
15 Page 4, line 25:

16 Delete "AS 25.23.180, whether"

17
18 Page 4, line 26:

19 Delete "AS 25.23.180"

20 Insert "AS 47.10.089"

21
22 Page 5, following line 5:

23 Insert new bill sections to read:

24 "* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of
27 Aid Rules, is amended to read:

28 (f) **Additional Findings.** In addition to the findings required under paragraph
29 (e), the court shall also make written findings related to

30 (1) whether the Department has made reasonable efforts required under
31 AS 47.10.086 or, in the case of an Indian child, whether the Department has made active

1 efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C.
2 Sec. 1912(d);

3 (2) whether the parent or guardian has made substantial progress to
4 remedy the parent's or guardian's conduct or conditions in the home that made the child a
5 child in need of aid; [AND]

6 (3) if the permanent plan is for the child to remain in out-of-home care,
7 whether the child's out-of-home placement continues to be appropriate and in the best
8 interests of the child; **and**

9 **(4) whether the Department has made reasonable efforts to finalize**
10 **the permanent plan for the child.**

11 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in Need
14 of Aid Rules, is amended to read:

15 (d) Relinquishment.

16 (1) Notwithstanding other provisions of this rule, the court may terminate
17 parental rights after a voluntary relinquishment pursuant to AS 47.10.089
18 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the
19 requirements set forth in 25 U.S.C. sec. 1913(c)."
20

21 Renumber the following bill sections accordingly.

22
23 Page 5, line 8:

24 Delete "AS 25.23.180(j), added by sec. 1"

25 Insert "AS 47.10.089(d), added by sec. 5"

26
27 Page 5, line 11:

28 Delete "AS 25.23.180(k), added by sec. 1"

29 Insert "AS 47.10.089(g) and (h), added by sec. 5"

30
31 Delete "amends"

1 Insert "amend"

2
3 Page 5, following line 13:

4 Insert the following new material:

5 "(c) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18(d)(1), Alaska Child in
6 Need of Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of
7 the relinquishment, allowing for the retention of certain privileges, and authorizing a review
8 hearing before the entry of an adoption or legal guardianship decree.

9 (d) AS 47.10.089, added by sec. 5 of this Act, amends Rule 18, Alaska Child in Need of
10 Aid Rules, by authorizing a review hearing for a termination before entry of an adoption or legal
11 guardianship decree.

12 * Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading
15 of AS 47.10.088 from "Sec. 47.10.088. Termination of parental rights and responsibilities" to
16 "Sec. 47.10.088. Involuntary termination of parental rights and responsibilities ""

17
18 Renumber the following bill sections accordingly.

19
20 Page 5, line 17:

21 Delete "sec. 8"

22 Insert "sec. 9"

23
24 Delete "only if sec. 8"

25 Insert "only if sec. 9"

26
27 Page 5, following line 18:

28 Insert the following new material:

29 "(b) Rule 9(g), Alaska Adoption Rules, as amended by sec. 10 of this Act, takes effect
30 only if sec. 10 of this Act receives the two-thirds majority vote of each house required by art. IV,
31 sec. 15, Constitution of the State of Alaska."

1 Page 5, line 19:
2 Delete "(b)"
3 Insert "(c)"
4
5 Delete "9"
6 Insert "11"
7
8 Page 5, line 20:
9 Delete "9"
10 Insert "11"
11
12 Page 5, following line 21:
13 Insert the following new material:
14 "(d) Section 4 of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as
15 amended by sec. 12 of this Act, take effect only if sec. 12 of this Act receives the two-thirds
16 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.
17 (e) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. 13 of this Act,
18 takes effect only if sec. 13 of this Act receives the two-thirds majority vote of each house
19 required by art. IV, sec. 15, Constitution of the State of Alaska."
20
21 Page 5, line 22:
22 Delete "(c) AS 25.23.180(j) and (k), added by sec. 1 of this Act, take"
23 Insert "(f) AS 47.10.089, added by sec. 5 of this Act, takes"
24
25 Delete "10"
26 Insert "14"

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 16, 2005

To: Jean Mischel, Legal Counsel

From: Rynnieva Moss, Legislative Aide *RW Moss*

Re: CSSH B 53() Version

Page 1, line 6:

Delete:

"to the retention of certain privileges of a parent in a"

Insert:

"proceedings regarding voluntary"

Page 1, line 2:

Delete:

"proceeding"

Page 2, line 9, following "Adoption Rules":

Insert: ", and Rules 17.2 and 18, Alaska Child in Need of Aid Rules"

Page 2, line 22, through page 3, line 4:

Delete all material.

Re number the following bill sections accordingly.

Page 8, line 29:

Insert new bill section:

(l) Within 12 months after the date a child enters foster care as calculated under AS 47.10.088 (f), the court shall hold a permanency hearing. The hearing and permanent plan developed in the hearing are governed by the following provisions:

(1) the persons entitled to be heard under AS 47.10.070 or under (f) of this section are also entitled to be heard at the hearing held under AS 47.10.088 (f);

(2) when establishing the permanent plan for the child, the court shall make appropriate written findings, including findings related to whether

(A) and when the child should be returned to the parent or guardian;

(B) the child should be placed for adoption or legal guardianship and whether a petition for termination of parental rights should be filed by the department; and

(C) the child should be placed in another planned, permanent living arrangement and what steps are necessary to achieve the new arrangement;

(3) if the court is unable to make a finding required under (2) of this subsection, the court shall hold another hearing within a reasonable period of time;

(4) in addition to the findings required by (2) of this subsection, the court shall also make appropriate written findings related to

(A) whether the department has made the reasonable efforts required under AS 47.10.086 to offer appropriate family support services to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter;

(B) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid under this chapter; and

(C) if the permanent plan is for the child to remain in out-of-home-care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and

(D) whether the department has made reasonable efforts to finalize the permanent plan for the child;

(5) the court shall hold a hearing to review the permanent plan at least annually until successful implementation of the plan; if the plan approved by the court changes after the hearing, the department shall promptly apply to the court for another permanency hearing, and the court shall conduct the hearing within 30 days after application by the department.

Page 4, line 27:

Delete: "and"

Insert: "or"

Page 4, line 24:

After the word "petition"

Insert: "pursuant to AS 47.10.110"

Page 9, lines 11 & 12:

Delete: "party"

Insert: "person"¹

Page 9, lines 17 & 18:

Delete: "the parent can show, by a preponderance of the evidence, that"

Page 9, lines 23:

After the word "and", insert:

"encourage foster parents"

Page 9, line 13:²

After the word "member"

Insert: Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 9, line 28:

New subsection to AS 47.10.084:

(d) When a child is in the custody of the department and the child is prescribed a psychotropic or other mental health medication, the department shall consider this a major medical treatment and obtain the consent of the child's parent or legal guardian before administering the medication.³

¹ Department of Law wants to make sure it is clear that a family member has a right to have a hearing on denial of information, placement, or participation in a adjudication hearing, that right does not make them a party to the CINA custody case.

² You can wordsmith this to your liking.

³ There might be a simpler way to add psychotropic or other mental health medication as a major medical treatment in subsection (c).

Page 11, line 13:

Delete the first "a"

Insert: "An interested person"

Page 11, line 18:⁴

After the word "hearing."

Insert: "Notwithstanding their right to request a hearing a non-party family member person requesting a hearing under this subsection is not eligible for publicly appointed legal counsel."

Page 11, line 24:

Insert new bill section to read:

"Sec. 47.10.089. Voluntary relinquishment of parental rights and responsibilities.

(a) The rights of a parent with reference to a child, including parental right to control the child, to withhold consent to an adoption, or to receive notice of a hearing on a petition for adoption, may be relinquished to the department and the relationship of parent and child terminated in a proceeding as provided in this section.

(b) A relinquishment must be in writing, signed by a parent, regardless of the age of the parent, in the presence of a representative of the department or in the presence of a court of competent jurisdiction with the knowledge and approval of the department. A copy of the signed relinquishment shall be given to the parent.

(c) A relinquishment may be withdrawn within 10 days after it is signed. The relinquishment is invalid unless it states that the parent has the right of withdrawal under this subsection.

(d) In a relinquishment of parental rights executed under this section, a parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child. A retained privilege must be in writing and state with specificity.

(e) Not sooner than 10 days after a relinquishment is signed, the court shall enter an order terminating parental rights if the court determines that termination of parental rights under the terms of relinquishment is in the child's best interests. If a parent has retained any privileges under (d) of this section, the court shall incorporate the retained privileges into the termination order with a recommendation that they be incorporated into an adoption or legal guardianship decree.

⁴ You can wordsmith this to your liking.

(f) A relinquishment may not be withdrawn and a termination order may not be vacated on the ground that a retained privilege has been withheld if the relinquishing parent or that the relinquishing parent has been unable, for any reason, to act upon a retained privilege, unless on grounds specified in Rule 60(b), Alaska Rules of Civil Procedure.

(g) After a termination order is entered, but before the entry of an adoption or legal guardianship decree, a party or a parent who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of a privilege retained in the termination order. The court may modify or enforce the retained privilege if it is in the best interests of the child to do so.

(h) After a termination order is entered, but before the entry of adoption or legal guardianship decree, a parent who voluntarily relinquished parental rights to a child under this section may request a review hearing, upon a showing of good cause, to vacate the termination order and reinstate parental rights relating to that child. A court shall vacate a termination order if the parent shows by clear and convincing evidence that reinstatement of parental rights is in the best interests of the child and that the parent is rehabilitated and capable of providing the care and guidance that will serve the moral, emotional, mental, and physical welfare of the child.

(i) A parent seeking a review under (g) or (h) of this section is entitled to the appointment of an attorney to the same extent as if the parent's rights had not been terminated."

Remember the following sections accordingly.

Page 12, line 25:

Delete: "department"

Insert: "Department of Health & Social Services and the Department of Administration"

Page 12, lines 28 & 29:

Delete: "an adult family member"

Re-insert: "parent"

Page 12, line 30:

Language to be added to clarify the information disclosed in the subsection does not include anything that would violate the attorney-client privilege.

Page 16, lines 16 - 19:

Delete all language and insert:

"Sec. 47.10.094. Immunity from liability. (a) A person may not bring an action for damages against the state, the commissioner, or the commissioner's designee based upon improper disclosure of, or failure to disclose, information under AS 47.10.093(k).

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct."

Page 17, line 24:

Delete "ombudsman for a panel review"

Insert:

"review panel"

Page 17 – page 18:

Delete:

"ombudsman"

Insert:

"review panel"

Delete ombudsman and insert "review panel" and

Page 19, lines 1 - 2

Delete all language.

Insert:

"Sec. 47.10.960. Civil liability. Failure to comply with a provision of this title does not constitute a basis for civil liability for damages. This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct."

Page 19, line 18:

Delete: "biological or adoptive"

Insert: "legal"

Page 19, Section 33:

The Department of Law wants to add language to this section that would allow for a placement of the child even when the parents object. They feel this section allows parents to veto placement.

Also, the department says there is a problem with subsection (f) in that once a child is placed with a relative or friend, they might become a foster home, or when placement is made the relative or friend would already be a foster home.

Page 22, line 13:

After the word "governor"

Insert: "the legislature."

Page 24, line 24 through Page 25, line 1.

Delete all language.

Page 29, line 3:

Insert a new bill section:

"*Sec. ____ The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 9(g), Alaska Adoption Rules is amended to read:

(g) **Withdrawal of Consent or Relinquishment of a Non-Indian Child.** The parent of a non-Indian child may withdraw a consent or relinquishment by notifying in writing the court, or the person or agency obtaining the consent or relinquishment, within 10 days of the birth or signing of the consent or relinquishment, whichever is later. Notification is timely if received or postmarked on or before the last day of this time period. The parent may move the court to permit withdrawal of the consent or relinquishment after the 10-day [10 DAY] period pursuant to AS 25.23.070 for consent or AS 25.23.180(g) or AS 47.10.089(h) for relinquishment."

Renumber the following bill sections accordingly.

Page 29, line 8, following "AS 25.23.180":

Insert: "or AS 47.10.089"

Page 29, line 10:

Delete: "AS 25.23.180, whether"

Page 29, line 11:

Delete: "AS 25.23.180"

Insert: "AS 47.10.089"

Page 29, line 22:

Insert new bill sections to read:

"Sec. ____ . The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 17.2(f), Alaska Child in Need of Aid Rules, is amended to read:

(f) **Additional Findings.** In addition to the findings required under paragraph (e), the court shall also make written findings related to

- (1) whether the Department has made reasonable efforts required under AS 47.10.086 or, in the case of an Indian child, whether the Department has made active efforts to provide remedial services and rehabilitative programs as required by 25 U.S.C. Sec. 1912(d);
- (2) whether the parent or guardian has made substantial progress to remedy the parent's or guardian's conduct or conditions in the home that made the child a child in need of aid; {AND}
- (3) if the permanent plan is for the child to remain in out-of-home care, whether the child's out-of-home placement continues to be appropriate and in the best interests of the child; and
- (4) whether the Department has made reasonable efforts to finalize the permanent plan for the child.

*Sec. ____. The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 18(d)(1), Alaska Child in Need of Aid Rules, is amended to read:

(d) Relinquishment.

(1) Notwithstanding other provisions of this rule, the court may terminate parental rights after a voluntary relinquishment pursuant to AS 47.10.089 [AS 25.23.180]. In the case of an Indian child, the relinquishment must meet the requirements set forth in 25 U.S.C. sec. 1913(c)."

Page 29, line 24:

Delete: "AS 25.23.180(j)," added by sec. 2"

Insert: "(a) AS 47.10.089(d), added by sec. __"

Insert new subsections:

"(b) AS 47.10.089(g) and (h), added by sec. __ of this Act, amend Rule 13, Alaska Adoption Rules, by authorizing a review hearing for a voluntary relinquishment before the entry of an adoption decree.

(c) AS 47.10.089, added by sec. __ of this Act, amends Rules 18(d)(1), Alaska Child in Need of Aid Rules, by providing that a relinquishment be in writing, allowing for withdrawal of the relinquishment, allowing for the retention of certain privileges, and authorizing a review hearing before the entry of an adoption or legal guardianship decree.

(d) AS 47.10.089, added by sec. __ of this Act, amends Rule 18, Alaska Child in Need of Aid Rules, by authorizing a review hearing for a termination before entry of an

(e) adoption or legal guardianship decree.

***Sec. __** The uncodified law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the heading of AS 47.10.088 from "Sec. 47.10.088. Termination of parental rights and responsibilities" to "Sec. 47.10.088. Involuntary termination of parental rights and responsibilities."

Renumber the following bill sections accordingly.

Page 31, lines 12-14:

Delete all language.

Page 32, line 5:

Insert new material:

"(f) Rule 9(g), Alaska Adoption Rules, amended by sec. __ of this Act, takes effect only if sec. __ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

Renumber "sec. __" language and subsection lettering in CONDITIONAL EFFECT clauses.

Page 32, line 8:

“(h) Section __ of this Act and Rule 17.2(f), Alaska Child in Need of Aid Rules, as amended by sec. 12 of this Act, take effect only if sec. __ of this Act receives two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

- (i) Rule 18(d)(1), Alaska Child in Need of Aid Rules, as amended by sec. __ of this Act, takes effect only if sec. __ of this Act receives the two-thirds majority vote of each house required by art. IV, sec. __, Constitution of the State of Alaska.

Page 32, line 8:

Delete: “(g) AS 25.23.180(j) added by sec. 2”

Insert: “(j) AS 47.10.089, added by sec. __”

Renumber “sec. 56”

Conceptual #2

a relinquishment may only be withdrawn

a) before Termination of
parent rights

b) in accord with court rules

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 114
 (H) Publish Date: 1/26/05
 Dept. Affected: Health & Social Services
 RDU: Children's Services
 Component: Front Line Social Workers

Revision Date/Time (Note if correction):

Title: RELATING TO CHILDREN IN NEED OF AID

Sponsor: (RLS) BY REQUEST OF THE GOVERNOR

Requester: GOVERNOR

Component No.: 2305

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0):						

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill addresses a number of different issues related to children in the custody of the department. The bill modifies various sections of Alaska Law by:

1. Allowing a parent to retain privileges of ongoing contact or communication with a child, when appropriate, after relinquishment of parental rights;
2. Maintaining permanent fund dividend eligibility for Alaskan children temporarily placed outside the state by the Department of Health and Social Services (DHSS)
3. Clarifying the court's authority to issue orders to aid the DHSS in its investigations of child abuse and neglect;

Prepared by: Marcia Kennai, Deputy Commissioner Phone 465-3191
 Division: Office of Children's Services Date/Time 12/27/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 12/29/2004
 Agency: Department of Health and Social Services

FISCAL NOTE

FN # 1

**STATE OF ALASKA
2005 LEGISLATIVE SESSION**

BILL NO. HB 114

ANALYSIS CONTINUATION

4. Modifying the circumstances under which the DHSS may assume emergency custody of a child in order to better protect abused and neglected children;
5. Establishing a definition of "mental health professional" for purposes of child in need of aid and juvenile delinquency proceedings, and
6. Allowing the court to make findings regarding the testimony of expert witnesses in cases where parents cannot be located.

Passage of this bill will not have a fiscal impact on the department.

Louie Flora

From: Linda Wilson [linda_wilson@admin.state.ak.us]
Sent: Tuesday, March 01, 2005 10:14 AM
To: Rep. Paul Seaton; Louie Flora
Cc: Michael A Tibbles; Joshua P Fink; Barbara L Malchick
Subject: HB114

Mr. Chairman: In response to your request this morning at the State Affairs hearing, here is my email address. My phone number is 334-4416.
I look forward to working with a subcommittee on this bill, and will let OPA know of your request as well. Linda Wilson, Deputy Director, Public Defender Agency.

Louie Flora

From: Joshua Fink [joshua_fink@admin.state.ak.us]
Sent: Tuesday, March 01, 2005 5:47 PM
To: Rep. Paul Seaton
Cc: Linda Wilson; Louie Flora; Michael A Tibbles; Barbara L Malchick
Subject: Re: HB114

Representative Seaton, I will participate as well. I will also have my civil section head, Barb Malchick, participate on OPA's behalf. My direct line is 269-3501. Please advise when you'd like me available.
Thanks, Josh Fink

Linda Wilson wrote:

>Mr. Chairman: In response to your request this morning at the State
>Affairs hearing, here is my email address. My phone number is 334-4416.
>I look forward to working with a subcommittee on this bill, and will
>let OPA know of your request as well. Linda Wilson, Deputy Director,
>Public Defender Agency.
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STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601
JUNEAU, ALASKA 99811-0601
PHONE: (907) 465-3031
FAX: (907) 465-3068

January 27, 2004

Honorable Paul Seaton, Chairman
House State Affairs Committee
Alaska State Capitol; Rm. 102
Juneau, AK 99801

Dear Representative Seaton,


The Department of Health and Social Services respectfully requests a hearing in the House State Affairs Committee on House Bill 114 "An Act relating to the retaining of certain privileges of a parent in a relinquishment and termination of a parent and child relationship proceeding; relating to eligibility for permanent fund dividends for certain children in the custody of the state; relating to child in need of aid proceedings and juvenile delinquency proceedings; and providing for an effective date."

This bill contains several distinct provisions relating to the child protection system.

A copy of Governor Murkowski's transmittal letter providing additional information on the bill and the associated fiscal note should be on file with the committee.

Your favorable consideration of this request will be appreciated.

Sincerely,


Sherry Hill, Special Assistant
Office of the Commissioner

cc: Kevin Jardell, Legislative Director
Office of the Governor

Marcie Kennai, Deputy Commissioner
Division of Health Care Services

pense" is not defined in the statute, but an examination of the rest of AS 18.85 clarifies its meaning.

[2] Chapter 85 of Title 18 of Alaska Statutes deals with the public defender agency. The agency is created by AS 18.85.010 "to serve the needs of indigent defendants." "If a court determines that the person is entitled to be represented by an attorney at public expense, it shall promptly notify the [public defender] agency or assign a private attorney for him under § 130 of this chapter." AS 18.85.110(d). AS 18.85.190(a) specifies that if the court makes the appointment, reasonable compensation and expenses "shall be paid by the court system." Paragraph (b) provides that if the agency contracts for private counsel for a defendant, "the public defender shall pay for these services out of appropriations to the agency." The plain meaning of the words "at public expense" as used in AS 18.85 is that either the public defender agency will pay the attorney's fees if it hires private counsel for a defendant, or the court system will pay if it appoints the private counsel. In any case, it is the state that pays. There is clearly no statutory authorization for assessing other non-parties for the fees of an indigent defendant for whom the court appoints counsel.

[3] ALSC is a non-profit corporation organized under AS 10.20. It receives most of its funding from Legal Services Corporation, also a non-profit corporation, although created by a federal act. ALSC does not have a general legal duty to provide lawyers to indigents in the same sense as the court system and the public defender agency do.

[4] The trial court clearly exceeded its authority when it ordered Alaska Legal Services to pay the fees of defendant's court-appointed counsel. While the court may be authorized to appoint counsel in this case, an issue which we do not decide, by appointing private counsel to represent the indigent defendant, the judge obligated the court system to pay for the attorney's serv-

not the question. The question is whether this was an order that the judge had the authority

ices. The statute makes no provision for requiring anyone else to reimburse the state when the court system pays for appointed counsel.

The judgment below must be reversed.
REVERSED.

BOOCHEVER, J., not participating.



RITA T., Appellant,

v.

STATE of Alaska, Appellee.

No. 5036.

Supreme Court of Alaska.

Feb. 13, 1981.

Following termination of parental rights, child's mother applied for hearing, which was denied by the Superior Court, Fourth Judicial District, Bethel, Gerald J. Van Hoomissen, J., without explanation. On appeal by the mother, the Supreme Court, Dimond, Senior Justice, held that: (1) all superior court orders of disposition of child-in-need-of-aid are to be reviewed upon application of interested party if party establishes good cause for review and if child is still ward of court, and (2) where mother on applying for hearing before superior court indicated that as result of 14-month rehabilitation program she had overcome problems leading to termination of her parental rights and also indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing warm and loving home for her child, same was sufficient showing of good cause to entitle her to review of order terminating her parental rights, providing final decree of adoption had not already been entered.

to make in the first place. An invalid order is unenforceable regardless of Civil Rule 71.

Case re
Rabinov
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1. Infants
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2. Adoption

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Case remanded.

Rabinowitz, C. J., filed a concurring opinion.

1. Infants \Rightarrow 242

All superior court orders of disposition of child-in-need-of-aid are to be reviewed upon application of interested party if party establishes good cause for review and if child is still ward of court. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(b, c), (c)(1-3), (f).

2. Adoption \Rightarrow 14

Entry of final decree of adoption dissolves any legal relationship between natural parents and their child, and child is no longer ward of court and natural parents cannot then seek review of order that terminated their parental rights. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

3. Infants \Rightarrow 242

So long as child remains a ward of court, his or her natural parents are entitled to review of order terminating their parental rights upon showing of good cause for hearing, and good cause can be established if parents show that it would be in best interests of child to resume living with them because they have sufficiently rehabilitated themselves that they can provide proper guidance and care for the child. AS 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

4. Infants \Rightarrow 242

Where mother on applying for hearing before superior court indicated that as result of 14-month rehabilitation program she had overcome problems leading to termination of her parental rights and also

1. AS 47.10.080(c) provides in part:

If the court finds that the minor is a child in need of aid, it shall

(3) by order, upon a showing in the adjudication by clear and convincing evidence that there is a child in need of aid under AS 47.10.010(a)(2) as a result of parental conduct and upon a showing in the disposition by clear and convincing evidence that the

indicated that professional counselors, social workers and others would be able to establish that she was now capable of providing warm and loving home for her child, same was sufficient showing of good cause to entitle her to review of order terminating her parental rights, providing final decree of adoption had not already been entered. AS 20.15.130(a), 47.05.010 et seq., 47.05.060, 47.10.080, 47.10.080(c)(3), (d, f).

Daniel N. Branch, Alaska Legal Services Corp., Bethel, for appellant.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., CONNOR, BUSKE and MATTHEWS, JJ., and DIMOND, Senior Justice.

OPINION

DIMOND, Senior Justice.

When Rita T.'s minor daughter C. L. T., was two years old, Rita and her boyfriend burned the child with a cigarette and beat her with a belt and a stick. As a result of these events, proceedings were commenced in superior court to terminate Rita's parental rights. After hearings in 1976 and 1977, the superior court adjudged C. L. T. to be a neglected child and committed her to the custody of the Department of Health and Social Services. The superior court terminated Rita's parental rights under subdivision (c)(3) of AS 47.10.080.¹ Rita appealed to this court and we affirmed the judgment. *In re C. L. T.*, 597 P.2d 518 (Alaska 1979).

In her first appeal, Rita contended that she was entitled to a review of the order terminating her parental rights. We held

parental conduct is likely to continue to exist if there is no termination of parental rights, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, and the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child.

that the issue was not properly before this court because Rita had not requested a hearing on the matter in the superior court. *In re C. L. T.*, 597 P.2d at 601. Rita subsequently applied for a hearing and the superior court denied the application without explanation. Rita has again appealed to this court. We now consider whether she is entitled to a review by the superior court of its order which terminated her parental rights.

AS 47.10.080(f) governs the review by the superior court of its orders relating to delinquent children and children in need of aid (identified as neglected children before the statute was amended). It states:

A minor found to be delinquent or a child in need of aid is a ward of the state as long as he is committed to the department [of health and social services] or the department has the power to supervise his actions. The court shall review an order made under (b) or (c)(1) or (2) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision, as it is being provided, is in the best interest of the minor and the public. The department, the minor, the minor's parents, guardian, or custodian are entitled, when good cause is shown, to a review on application. If the application is granted, the court shall afford these parties and their counsel reasonable notice in advance of the review and hold a hearing where these parties and their counsel shall be afforded an opportunity to be heard. The minor shall be afforded the opportunity to be present at the review.

This subsection contains two separate provisions for the review of orders made under AS 47.10.080. The subsection first provides

2. Subsection (b), which is not relevant here, is a lengthy section dealing generally with the dispositive phase of a hearing after a minor is found delinquent. Subsections (c)(1) and (2), provide, in pertinent part:

(c) If the court finds that the minor is a child in need of aid, it shall

(1) order the minor committed to the department for placement in an appropriate setting for a period of time not to exceed two

that orders made under AS 47.10.080(b), (c)(1) or (c)(2)² shall be reviewed automatically each year, or more frequently if necessary. The subsection then provides that orders shall be reviewed upon the application of certain interested parties, such as the minor's parents, when the application establishes good cause for the review. It is clear that orders made under (c)(3) are not entitled to automatic review, inasmuch as subsection (f) specifies which orders are entitled to this review and orders under (c)(3) are not included within the list. There is no similar enumeration of which orders are entitled to review upon a showing of good cause, and the language of the subsection does not clearly indicate whether orders made pursuant to (c)(3) are to be included or not for this type of review.

[1] An examination of public policy and the purposes of title 47 as it relates to children, however, convinces us that all orders made pursuant to AS 47.10.080, including orders under subsection (c)(3), are to be reviewed upon application of an interested party if the party establishes good cause for the review, and if the child is still a ward of the court. AS 47.06.060 provides as follows:

The purpose of this title as it relates to children is to secure for each child the care and guidance, preferably in his own home, that will serve the moral, emotional, mental, and physical welfare of the child and the best interests of the community; to preserve and strengthen the child's family ties whenever possible, removing him from the custody of his parents only as a last resort when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the child is removed from his family, to secure for him adequate custody and care.

years . . . except that the department may petition for and the court may grant in a hearing . . . two-year extensions of commitment which do not extend beyond the child's 18th birthday if the extension is in the best interest of the minor and the public; . . .

(2) order the minor released to his parents, guardian, or some other suitable person

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We believe that an interpretation of subsection (f) which permits the review of an order that terminates parental rights is most consonant with these purposes because it provides an opportunity for the child to resume living with his or her parents when the parents become capable of providing "adequate custody and care" for the child. While it may not be true of all, some parents are capable of changing and overcoming the problems that caused the termination of their parental rights. For those who can now provide the care and guidance "that will serve the moral, emotional, mental and physical welfare of the child," AS 47.05.060, good cause exists for reviewing the order that terminated their parental rights. Many children who become wards of the court when their parents' rights are terminated are not adopted and they therefore remain wards of the court throughout their minority. Permitting a renewal of the relationship between the child and his parents if the child is still a ward of the court and the parents have undergone a substantial rehabilitation fulfills the purposes of title 47 as much, if not more, than permitting the child to spend his or her entire minority in a succession of foster homes.

[2] We note that AS 47.10.080(c)(3) requires the Department of Health and Social Services to attempt to find a permanent placement for the child when the parental rights of his natural parents have been terminated,³ and subdivision (d) of that statute authorizes the Commissioner of Health and Social Services to consent to the adoption of the child.⁴ These subsections indicate a leg-

islative intent that permanent homes be found for the children so that a stable family life can be created for them. Our holding in this case does not conflict with this purpose. Once the child has been adopted, he or she is no longer a ward of the court and the natural parents cannot seek review of the order that terminated their parental rights. The entry of a final decree of adoption dissolves any legal relationship between the natural parents and their child,⁵ and, therefore, no relationship exists which could be renewed if the order terminating the parental rights were reviewed.

[3, 4] We conclude that as long as a child remains the ward of the court, under AS 47.10.080(f) his or her natural parents are entitled to a review of the order terminating their parental rights upon a showing of good cause for the hearing. Good cause could be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child.

When Rita applied for a hearing before the superior court, she indicated that as a result of a fourteen-month rehabilitation program she has overcome the problems that led to the termination of her parental rights. She also indicated that professional counselors, social workers and others would be able to establish that she is now capable of providing a warm and loving home for C. L. T. This is a sufficient showing of good cause to entitle her to a review of the order terminating her parental rights if C. L. T. has not yet been adopted.⁶

3. AS 47.10.080(c)(3) provides in relevant part that "the department or guardian shall report annually to the court on efforts being made to find a permanent placement for the child."

4. AS 47.10.080(d) states: "An order issued under (c)(3) of this section authorizes the commissioner of health and social services or his designee or the guardian of the person of the child to consent to the adoption of the child."

5. AS 20.15.130(a) provides in relevant part:

A final decree of adoption, whether issued by a court of this state or of any other state, has the following effect as to matters within the jurisdiction or before a court of this state:

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships between the adopted person and his relatives, including his natural parents, so that the adopted person thereafter is a stranger to his former relatives for all purposes

6. We note that at the time of Rita's application for a hearing proceedings for the adoption of C. L. T. had been commenced. If a final decree of adoption has already been entered, Rita's request for a hearing should be denied.

We REMAND this case to the superior court for further proceedings consistent with this opinion.

RABINOWITZ, Chief Justice, concurring.

I agree with the court's construction of AS 47.10.080(f) that a natural parent whose parental rights have been terminated has the right to a review of the order terminating parental rights upon a showing of good cause.

However, I would also grant a hearing to Rita T. to review the original termination order under the significantly stricter standards of the new statute, regardless of whether or not C. L. T. has now been adopted. The new statute became effective less than four months after the order terminating Rita T.'s parental rights was entered under the former statute.

In the Matter of J. M. and M. M., 573 P.2d 1376, 1378-79 (Alaska 1978), holds that the repeal of a former statute and adoption of a new statute with significantly stricter standards constitute good cause for review of a judgment of dependency, and that children adjudged dependent under AS 47.10.010(a)(5) prior to its repeal are entitled to a hearing under the stricter standards of the new AS 47.10.010(a). Since under the court's decision in the case at bar we have held that good-cause review is available in a termination case, I conclude that Rita T. is entitled to a hearing to review the termination of her parental rights under the standards of the new statute without regard to whether or not C. L. T. has been adopted prior to the hearing. In contrast with the "good cause" of Rita T.'s rehabilitation, the "good cause" justifying the hearing under the new standards is that she has the right to have the new standards applied to the original termination of her parental rights. Thus, the hearing I contemplate would determine whether or not the original termination was valid.



Peter DANA, a/k/a Peter Olsen,
Appellant,

v.

STATE of Alaska, Appellee.

No. 4888.

Court of Appeals of Alaska.

Jan. 22, 1981.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage, Ralph E. Moody, J., of sale of one gram of cocaine, and he appealed. The Court of Appeals, Coats, J., held that: (1) trial court did not err in admitting a tape recording of conversation between defendant and undercover officer, despite the defendant's contention that, because the tape was of poor quality and had significant gaps where equipment failed and conversation could not be heard, exculpatory statements which he allegedly made were not on tape and that the tape was misleading, where defendant failed to show any way in which he had been unfairly prejudiced in presenting his defense by admission of the tape; and (2) given limited nature of offer of proof and vague and conclusory manner in which it was stated, trial court did not err in denying defendant's motion for evidentiary hearing on his motion to have venue changed to place where offense occurred on theory of alleged cultural and social differences between that place and places where court offered to have case tried and court did not err in denying the motion; and (3) although defendant sold a small quantity of cocaine and had a relatively clean record, sentence of four years' imprisonment with two years suspended and fine of \$1,000 was not improper, in view of evidence that defendant possessed 50 to 75 packets similar to one which he sold to undercover officer and which contained cocaine and that defendant told undercover officer he had been

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Affirmed.

1. Criminal Law

When trials of statutory offenses of venue based on special differences in offense was alleged which trial is the duty of exclusion from class of person changed. AS Rules of Criminal

2. Criminal Law

Given limited and vague and it was stated, denying defendant hearing on his changed to place theory of alleged differences between court offered to did not err in c Art. 1, § 11; AS Rules of Criminal

3. Criminal Law

In prosecution court did not because prosecution agent, did not suggest to him no violation of criminal or prosecution advising persons from discussing and court ruled by to anything report and indicate deposition of officer proper showing,

Sec. 25.23.175. Findings concerning persons born outside the United States. In the case of the adoption of a person born outside the United States, if requested by the adoptive parents, the court shall make findings, based on evidence from the petition and other reliable state or federal sources, on the date and place of birth and parents of the adopted person. The findings shall be certified by the court and included with the report of adoption filed with the state registrar of vital statistics under AS 18.50.210. (9 ch 76 SLA 1982)

Revisor's notes. — Enacted as AS 20.15.170(b). Renumbered in 1982.

Sec. 25.23.180. Relinquishment and termination of parent and child relationships. (a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or before an adoption proceeding as provided in this section.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent, a copy of which shall be given to the parent,

(1) in the presence of a representative of an agency taking custody of the child, whether the agency is within or outside of the state or in the presence and with the approval of a court within or outside of this state in which the minor was present or in which the parent resided at the time it was signed, which relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later; or the relinquishment is invalid unless it states that the parent has this right of withdrawal or

(2) in any other situation if the petitioner has had custody of the minor for two years or only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continuing custody by the petitioner, that the best interest of the child requires the granting of adoption.

(c) The relationship of parent and child may be terminated by a court order issued in connection with a proceeding under this chapter or a proceeding under AS 47.10 on the following grounds

(1) specified in AS 47.10.080(o) or 47.10.088;

(2) that a parent who does not have custody is unreasonably withholding consent to adoption, contrary to the best interest of the minor child; or

(3) that the parent committed an act constituting sexual assault or sexual abuse of a minor under the laws of this state or a comparable offense under the laws of the state where the act occurred that resulted in conception of the child and that termination of parental rights of the biological parent is in the best interests of the child.

(d) For the purpose of an adoption proceeding under this chapter, a decree issued by a court of competent jurisdiction in this or another state terminating all rights of a parent with reference to a child or the relationship of parent and child dispenses with the requirements required

(1) consent by that parent to an adoption of that child; and

(2) notice of a proceeding to that parent unless otherwise required by this section.

(e) A petition for termination of the relationship of parent and child made in connection with an adoption proceeding or in an independent proceeding for termination of parental rights on grounds set out in (c)(3) of this section may be made

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) another person having legal custody.

(f) Before the petition is heard shall be given the opportunity to be heard the person having legal custody of the person having legal custody appointed to represent any other person.

(g) Notwithstanding the rights with respect to a child, a decree of a court set out in (c)(1) and (2) of this section, if the child is not on the child consents in writing to the adoption.

(h) The respondent to a proceeding set out in (c)(3) of this section may appoint the office of public defender.

(i) Proceedings for the termination of parental rights under this section do not affect the liability of a perpetrator to obtain legal and equitable redress for the perpetrator's conduct. (§ 12.50 SLA 1987; am § 12 ch 98)

Revisor's notes. — Formerly numbered in 1982.

Effect of amendments. — The

Substantial compliance with requirements. — When it is clear that the requirements governing consent have been fulfilled, substantial compliance. S.O. v. W.S., 643 P.2d 997 (Alaska 1982) (ruled on other grounds, Rosen v. Accountancy, 689 P.2d 478 (Alaska 1984)).

Unreasonable refusal to consent. — The trial court did not err in holding that the father's refusal to consent to the adoption by the maternal grandparents where the father's conviction of child's mother had been affirmed and the father had a slight chance of prevailing on fur appeal. S.S., 928 P.2d 1194 (Alaska 1996).

Applicability of requirements of right to withdraw. — A statement of right to withdraw in a petition (b)(1) is not applicable to a petition for termination of parental rights. B.J.B.A. v. M.J.B., 620 P.2d 652 (Alaska 1981).

Termination of parental rights in subsection (a) stating that termination of parental rights can occur "before an adoption" may be read in conjunction with the language of subsection (b), which states that involuntary termination of parental rights refers to cases in which parents of a child have been terminated of parental rights. S.J. v. L.T., 72 P.2d 1986.

Absent statutory authorization for termination of parental rights an order, 1986 termination order was entered since it was not entered in a state adoption proceeding or a child in custody. Perry v. Newkirk, 871 P.2d 1

(3) an agency; or

(4) another person having a legitimate interest in the matter.

(f) Before the petition is heard, notice of the hearing on the petition and opportunity to be heard shall be given the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and, in the discretion of the court, a person appointed to represent any party.

(g) Notwithstanding the provisions of (b) of this section, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship on grounds set out in (c)(1) and (2) of this section may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

(h) The respondent to a petition filed for the termination of parental rights on grounds set out in (c)(3) of this section is entitled to representation in the proceedings by an attorney. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.

(i) Proceedings for the termination of parental rights on the grounds set out in (c)(3) of this section do not affect the rights of a victim of sexual abuse of a minor or incest to obtain legal and equitable civil remedies for all injuries and damages arising out of the perpetrator's conduct. (§ 1 ch 84 SLA 1974; am § 32 ch 21 SLA 1985; am §§ 10 — 13 ch 50 SLA 1987; am § 12 ch 99 SLA 1998)

Revisor's notes. — Formerly AS 20.15.180. Renumbered in 1962.

Effect of amendments. — The 1998 amendment,

effective September 14, 1998, in subsection (c) made minor stylistic changes and a section reference substitution.

NOTES TO DECISIONS

Substantial compliance with consent requirements. — When it is clear that the statutory purpose has been fulfilled, substantial compliance with the requirements governing consent to adoption is sufficient. *S.O. v. W.S.*, 643 P.2d 997 (Alaska 1982), overruled on other grounds, *Rosen v. State Bd. of Pub. Accountancy*, 689 P.2d 478 (Alaska 1984).

Unreasonable refusal to consent to adoption. — The trial court did not err in finding that the father's refusal to consent to the adoption of his child by the maternal grandparents was unreasonable where the father's conviction of the murder of the child's mother had been affirmed and he had only slight chance of prevailing on further appeals. *R.F. v. S.S.*, 928 P.2d 1194 (Alaska 1996).

Applicability of requirement to include statement of right to withdraw. — The inclusion of a statement of right to withdraw requirement of paragraph (b)(1) is not applicable to a consent to adoption. *B.J.B.A. v. M.J.B.*, 620 P.2d 652 (Alaska 1980).

Termination of parental rights. — The language in subsection (a) stating that termination of parental rights can occur "before an adoption proceeding" must be read in conjunction with the "relinquishment" language of subsection (b), which does not contemplate involuntary termination actions, but instead refers to cases in which parents choose to give up their parental rights. *S.J. v. L.T.*, 727 P.2d 789 (Alaska 1986).

Absent statutory authorization, there can be no termination of parental rights and obligations; therefore, 1986 termination order was erroneously entered since it was not entered in a statutorily authorized adoption proceeding or a child in need of aid proceeding. *Perry v. Newkirk*, 871 P.2d 1150 (Alaska 1994).

Conditional relinquishment not statutorily authorized. — Biological mother's relinquishment of parental rights in her child, conditioned on the adoption of the child by named adoptive parents, did not constitute an effective relinquishment of parental rights because conditional relinquishments were not authorized by this section. *Native Vill. of Napaimute Traditional Council v. Terence W.* (In re Adoption of M.W.), 79 P.3d 623 (Alaska 2003).

Revocation before entry of termination order. — Biological mother's relinquishment of parental rights in her child, conditioned on the adoption of the child by named adoptive parents, did not constitute an effective relinquishment of parental rights where the mother revoked her consent before entry of the decree terminating her parental rights. *Native Vill. of Napaimute Traditional Council v. Terence W.* (In re Adoption of M.W.), 79 P.3d 623 (Alaska 2003).

Sexual abuse termination. — The superior court erred in denying stepfather's motion for a hearing on natural father's alleged abuse of his children, since, under paragraph (c)(1), stepfather could properly seek to terminate natural father's parental rights in connection with adoption proceedings as specified in AS 47.10.080 (c)(3). *In re J.B.K.*, 865 P.2d 737 (Alaska 1993).

Conception resulting from sexual assault. — Paragraph (c)(3) expressly authorizes a court to terminate a biological father's parental rights in an adoption proceeding if it finds that his child's conception resulted from an act of sexual assault and that termination is in the child's best interests. *B.F. v. D.M.*, 15 P.3d 258 (Alaska 2001).

"Parent who does not have custody". — A parent who has rights to visitation is not a parent who

26.33.280

DOMESTIC RELATIONS

C.J.S. Health and Environment § 41.

Appeal, time allowed for filing notice, see Wash. Prac. vol. 3, Orland and Teglund, RAP 5.2.

26.33.290. Decree of adoption—Duties of state registrar of vital statistics

Upon receipt of a decree of adoption, the state registrar of vital statistics shall:

(1) Return the decree to the court clerk if all information required by RCW 26.33.250 is not included in the decree;

(2) If the adoptee was born in a state other than Washington, or in a territory of the United States, forward the certificate of adoption to the appropriate health record recording agency of the state or territory of the United States in which the birth occurred;

(3) If the adoptee was born outside of the United States or its territories, issue a new certificate of birth by the office of the state registrar of vital statistics which reflects the information contained in the decree.

Enacted by Laws 1984, ch. 155, § 29, eff. Jan. 1, 1985.

Cross References

Vital statistics, see § 70.58.005 et seq.

Library References

Health and Environment § 41,
Statutes § 73,
WESTLAW Topic Nos. 199, 360.

C.J.S. Health and Environment § 41,
C.J.S. Statutes §§ 130 to 134, 140.

26.33.295. Open adoption agreements—Agreed order.—Enforcement

(1) Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents.

(2) Agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section. The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any birth parent whose parental rights have not previously been terminated, and, if the child is in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian ad litem in a

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ADOPTION

26.33.300

proceeding under this chapter or in any other child-care body proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the child adoptee, the adoptive parents, and a birth parent or parents as agreed upon and as set forth in the proposed order, would be in the child adoptee's best interests.

(3) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.

(4) An agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the child adoptee, and that: (a) The modification is agreed to by the adoptive parent and the birth parent or parents; or (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

Enacted by Laws 1990, ch. 285, § 4.

Historical and Statutory Notes

Purpose—Purpose—Severability—
Laws 1990, ch. 285: See Historical and
Statutory Notes following § 74.04.005.

United States Supreme Court

Adoption, federal due process rights of
adoptive parents and child, habeas cor-
pus ordering surrender of custody, see
O'Connell v. Kirchner, 1995, 115 S.Ct.
891, 130 L.Ed.2d 873.

26.33.300. Adoption statistical data

The department of health shall be a depository for statistical data concerning adoption. It shall furnish to the clerk of each county a data card which shall be completed and filed with the clerk on behalf of each petitioner. The clerk shall forward the completed cards to the department of health which shall compile the data and publish reports summarizing the data. A birth certificate shall not be issued showing the petitioner as the parent of any child adopted in the state of Washington until a data card has been completed and filed. Enacted by Laws 1984, ch. 155, § 30, eff. Jan. 1, 1985. Amended by Laws 1990, ch. 146, § 5; Laws 1991, ch. 3, § 288.

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OREGON

109.305

DOMESTIC RELATIONS

as may be required by ORS 109.312 or 109.342. [1993 c.717 §8]

109.305 Interpretation of adoption law agreement for continuing contact.

(1) The rules that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of this state.

(2) Nothing in the adoption laws of this state shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or the adoptive parents. As used in this subsection, "birth relatives" includes birth parents, grandparents, siblings and other members of the child's birth family.

(3) Failure to comply with the terms of an agreement made under subsection (2) of this section is not grounds for setting aside an adoption judgment or revocation of a written consent to an adoption.

(4)(a) An agreement made under subsection (2) of this section may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

(b) The court may modify an agreement made under subsection (2) of this section if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:

(A) The modification is agreed to by all parties to the original agreement; or

(B) Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement. [1967 c.710 §15; subsections (2), (3) and (4) enacted as 1993 c.401 §1; 2003 c.578 §142]

Note: 109.306 (3) to (4) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.307 Court required to act within six months of filing of petition for adoption; duty of clerk. (1) Not earlier than provided in ORS 109.309 and not later than six months from the date on which the petition for leave to adopt another is filed under ORS 109.309, the court before which the petition is pending shall hold a hearing and shall:

(a) Enter a judgment under ORS 109.350;

(b) Continue the guardianship or legal custodial status of the child;

(c) Waive the child to a court having jurisdiction under ORS 419B.100 or 419C.005; or

(d) Take such other action as the court considers necessary.

(2) The court before which the petition is pending, on its own motion, may take testimony from or confer with the child to be adopted and may exclude from the conference the parents or guardians of the child, the proposed adoptive parents and other persons if the court finds that such action would be likely to be in the best interests of the child. However, the court shall permit an attorney for each party to attend the conference, and the conference shall be reported.

(3) The clerk of the court before which petitions for leave to adopt another are pending shall periodically notify the court and the Department of Human Services of all such petitions which have been pending before the court for more than six months without final disposition pursuant to subsection (1) of this section.

(4) The clerk of the court before which a petition is filed for leave to adopt a minor child shall provide to the Director of Human Services a copy of the court's order of disposition of the petition. [1965 c.188 §2; 1983 c.369 §8; 1987 c.814 §2; 1988 c.33 §22; 1999 c.548 §117; 2003 c.578 §143]

109.308 Confidentiality of petitioners. In any adoption proceeding that is contested or in which citation is required to be served, the court may preserve the confidentiality of the names and addresses of the petitioners for the adoption if it finds that to do so is in the best interests of the child. [Formerly 109.285]

Note: 109.308 was made a part of ORS chapter 109 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

109.309 Petition for adoption; residency requirements; where filed; venue; notice; placement report; fee; rules. (1) Any person may petition the circuit court for leave to adopt another person and, if desired, for a change of the other person's name. One petitioner, the child, one parent or the person, who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) must be a resident of this state. As used in this subsection, "resident" means a person who has resided in this state continuously for a period of six months prior to the date of the petition.

(2) Except as provided in subsection (3) of this section, when the petition is for the adoption of a minor child, the adoption shall be governed by the Uniform Child Custody

Notice: This opinion is subject to correction before publication in the PACIFIC REPORTER. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0608, fax (907) 264-0878, e-mail corrections@appellate.courts.state.ak.us.

THE SUPREME COURT OF THE STATE OF ALASKA

ALDEN H., SR.,

Appellant,

v.

STATE OF ALASKA, OFFICE OF CHILDREN'S SERVICES,

Appellee.

Supreme Court No. S-11450

Superior Court No. 3AN-98-00357/358 CP

OPINION

[No. 5874 - March 4, 2005]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Peter A. Michalski, Judge.

Appearances: Chad W. Holt, Holt & Brockberg, LLC, Anchorage, for Appellant. Michael G. Hotchkiss, Assistant Attorney General, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee State of Alaska. Leslie Dickson, Assistant Public Advocate, Anchorage, for Appellee Guardian ad Litem.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

CARPENETI, Justice.

NOTICE: This opinion will be released to the press and public at 12:30 p.m. on the date indicated. This copy is provided to parties or their counsel of record in advance. Prior to this release then, you may not inform persons other than your clients in this case of the outcome.

Clerk of the Appellate Courts

I INTRODUCTION

Alden H. is the father of two severely troubled boys, Alden, Jr. and Neil.¹

¹ Pseudonyms have been used for all family members throughout this opinion in order to protect their identities.

In 2000 Alden voluntarily relinquished his parental rights.² He is now attempting to withdraw his relinquishment and re-enter his sons' lives. Alden moved before the superior court for a hearing to review his relinquishment and for an order to enforce a provision of the relinquishment purporting to grant him visitation rights. The superior court denied both motions and Alden appeals. Finding no error, we affirm.

II. FACTS AND PROCEEDINGS

A. Facts

Alden H. is the father of Alden H., Jr. and Neil H. The boys' mother is Sara B. She is not a party to this action. Alden and Sara lived together in Anchorage with Alden Jr., Neil, and Sara's two older children by a different father, Zander and Nancy. The Alaska Department of Health and Social Services³ had received reports of substance abuse, neglect, and domestic violence but had lost track of the family because of frequent moves. On June 4, 1998 the Anchorage Police Department responded to a report that a child had been left unattended in a stroller all day. The police discovered Neil in a stroller in the driveway of the family's home, and found Sara inside, asleep, and smelling of alcohol.

After this incident, the family fled to a Fairbanks campground. On June 11, 1998 Zander ran to the police recounting a variety of abuses — including being forced to drink alcohol and ingest hallucinogenic mushrooms, and physical abuse by Alden. At the

² Alden voluntarily relinquished his parental rights pursuant to AS 25.23.180(b): "All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing"

³ Appellee Office of Children's Services is the successor to the Division of Family and Youth Services in the Alaska Department of Health and Social Services. It is referred to in this opinion as "the department."

time, Zander was reportedly filthy and suffering from bronchitis. All four children were taken into state custody. Like Zander, the others were "filthy, with dirt in their hair, ears, eyes, mouth and genital areas." Neil was diagnosed with conjunctivitis. Nancy later reported that Alden had sexually abused her. Zander added that Alden had threatened to kill Zander and Nancy if Nancy ever reported the abuse.

The department developed a family reunification plan for Alden and Sara. The plan required both parents to work toward permanent sobriety, receive counseling for anger management, and attend parenting classes. Neither parent complied. In 1999 Alden spent ninety days in jail on a domestic violence charge. After his release, he was arrested on federal drug charges related to the manufacture of methamphetamines. He was later convicted and sentenced to seventy months in prison.

In June 2000 the department placed the boys with Alden's mother, Meg H. The department commenced proceedings to terminate the parental rights of Alden and Sara in August 2000. On December 27, 2000, prior to trial, Alden executed a voluntary relinquishment of his parental rights from federal prison in California. The relinquishment specified that Alden retained the right to contact his children subject to the discretion of the adoptive parents. The relinquishment also stated that the children would be placed for adoption with Meg, and that if Meg ever became unable to care for the boys for any reason, the department would contact Alden, and give him an opportunity to request the withdrawal of his relinquishment subject to the approval of the department. Sara's parental rights were involuntarily terminated on January 22, 2001.

The boys were removed from Meg's home in October 2001 following reports of abuse. The children were subsequently separated and placed in therapeutic foster care. Both suffer from severe emotional and behavioral problems; each has been through several foster homes. According to therapists who have treated Alden Jr. and

Neil, "[v]ery skilled therapeutic foster parents with additional case manager and activity therapy support are, at times, taxed to their limit [in] maintaining the boys adequately." These therapists believe that an appropriate care giver would need "stellar therapeutic parenting skills, saintly patience, and an extensive working knowledge of developmental issues of emotionally disturbed children."

Alden was transferred from prison to a halfway house in Spokane, Washington in February 2002. While incarcerated, he stopped drinking and taking drugs. He reportedly remains sober. Alden was released from federal custody in August 2002. As of May 2003, he planned to marry a woman he had met at the halfway house. His fiancée has four children — including a twenty-year-old daughter with a young child. He currently works as an independent contractor in the Spokane area. Alden learned that the boys had been removed from Meg's home in April 2002 and promptly requested the withdrawal of his relinquishment.

B. Proceedings

Alden moved for a hearing to review the order terminating his parental rights on January 5, 2004. He claimed that the relinquishment had been conditioned on the permanent placement of his boys with Meg and that the relinquishment should be withdrawn because that placement had failed. He also argued that he had a right to withdraw his relinquishment pursuant to *Rita T. v. State*⁴ because he had overcome his substance abuse problems and was gainfully employed. On January 12, 2004 he added a motion to enforce visitation rights he claimed were contained within the relinquishment agreement. The department opposed both motions.

Alden's motions were reviewed by William C. Hitchcock, Standing Master of Anchorage Children's Court. Neither party requested oral arguments or an evidentiary

⁴ 623 P.2d 344 (Alaska 1981).

hearing before Master Hitchcock. Briefing was completed on February 25, 2004 and Master Hitchcock issued his recommendation shortly thereafter. The master recommended denying both of Alden's motions. He found that the relinquishment agreement was not conditioned on the successful placement of the boys with Meg, that Alden had failed to show good cause for a *Rita T.* hearing, and that the department soundly exercised its discretion by refusing to allow Alden to have contact with his children. Alden objected to Master Hitchcock's recommendations and asked for a hearing *de novo* before the superior court. On March 30, 2004, Superior Court Judge Peter A. Michalski adopted Master Hitchcock's recommendations as the order of the court without alterations and without specifically ruling on Alden's demand for a hearing. Alden appeals from this decision.

III. STANDARD OF REVIEW

Ordinarily, we review the validity of a relinquishment *de novo*.⁶ However, this issue was raised for the first time on appeal. "Issues not raised in the trial court shall not be considered on appeal, except for plain error. Plain error exists 'where an obvious mistake has been made which creates a high likelihood that injustice has resulted.'"⁶ We review the superior court's decision to enforce the relinquishment for plain error.

We review the factual conclusions of a lower court for clear error.⁷ We will find clear error "if a review of the entire record in the light most favorable to the party prevailing below leaves us 'with a definite and firm conviction that a mistake has been

⁶ *In re Adoption of Keth M. W.*, 79 P.3d 623, 625 (Alaska 2003).

⁶ *D.J. v. P.C.*, 36 P.3d 663, 667-68 (Alaska 2001) (quoting *Broeckel v. State, Dep't of Corrections*, 941 P.2d 893, 897 (Alaska 1997)).

⁷ *Brynna B. v. State, Dep't of Health & Soc. Servs.*, 88 P.3d 527, 529 (Alaska 2004).

made.⁸

A finding that a party failed to show good cause that a *Rita T.* hearing should be held is reviewed for abuse of discretion.⁹

We review the superior court's decision to deny *de novo* review of the master's report also for abuse of discretion.¹⁰ We will find an abuse of discretion only if, based on a review of the whole record, we are left with a definite and firm conviction that a mistake has been made.¹¹

IV. DISCUSSION

A. Enforcing the Relinquishment Was Not Plain Error.

Alden relinquished his parental rights subject to AS 25.23.180(b). We have recognized that the termination of parental rights did not exist at common law and that no termination is valid without statutory authorization.¹² In *In re Adoption of Keith M. W.*,¹³ we noted that AS 25.23.180(b) authorizes only the complete relinquishment of

⁸ *Id.* (quoting *A.B. v. State, Dep't of Health & Soc. Servs.*, 7 P.3d 946, 950 (Alaska 2000)).

⁹ *C.L. v. P.C.S.*, 17 P.3d 769, 772 (Alaska 2001) (finding of good cause to deviate from Indian Child Welfare Act (ICWA) placement preferences is reviewed for abuse of discretion).

¹⁰ *Faulkner v. Goldfuss*, 46 P.3d 993, 996 (Alaska 2002).

¹¹ *Stinson v. Holder*, 996 P.2d 1238, 1242 (Alaska 2000).

¹² *Perry v. Newkirk*, 871 P.2d 1150, 1153 (Alaska 1994) (citing Stephen B. Presser, *The Historical Background of the American Law of Adoption*, 11 J. FAM. L. 443 (1972)); see also *S.J. v. L.T.*, 727 P.2d 789, 797 (Alaska 1986).

¹³ 79 P.3d 623 (Alaska 2003).

parental rights.¹⁴ The statute does not authorize conditional or partial relinquishments.¹⁶

Alden argues that his voluntary relinquishment was conditional because it required the adoptive placement of his boys specifically with his mother, or that it was partial because he reserved a right of contact with his children, or both. Because conditional and partial relinquishments are not authorized by AS 25.23.180(b), Alden contends that the relinquishment was void and that it was error for the superior court to enforce it. Since Alden did not raise this issue before the superior court, we review for plain error.¹⁶ Plain error exists "where an obvious mistake has been made which creates a high likelihood that injustice has resulted."¹⁷ Because the relinquishment was not conditioned on the placement of his children with his mother, and because the master's finding that "the relinquishment was not conditioned on the provision of visitation rights" was not a mistake (much less an obvious mistake), we affirm the superior court.

1. The relinquishment agreement was not conditioned on placement of the children with Alden's mother, Meg H.

Master Hitchcock found "nothing which supports [Alden's] assertion that failure of the placement gave rise to an automatic right to withdraw the relinquishment and thus vacate the termination order." We agree. The relinquishment contained no language specifying that the relinquishment is void if the placement with Meg H. should

¹⁴ *Id.* at 627.

¹⁵ *Id.*

¹⁶ *D.J. v. P.C.*, 36 P.3d 663, 667-68 (Alaska 2001). Alden concedes that the plain error standard applies.

¹⁷ *Id.* (quoting *Broeckel v. State, Dep't of Corrections*, 941 P.2d 893, 897 (Alaska 1997)).

fail." The relinquishment actually stated that the placement with Meg H. itself was conditional. According to the agreement, the department must receive "a positive home study . . . before the Department can consent to adoption of [Alden Jr.] and [Neil] by [Meg H.]" The agreement also allowed Alden to request the withdrawal of his relinquishment if the placement with Meg H. failed, but it explicitly noted that Alden could withdraw his relinquishment only if the department agreed to allow it. The relinquishment was therefore not conditioned on the successful placement of the children for adoption with Meg H.

2. Enforcing the relinquishment in light of language purporting to preserve a right of contact was not plain error.

Alden also argues that the relinquishment is void because it retained a right of contact. We disagree for two reasons. First, Master Hitchcock concluded that the relinquishment agreement did not preserve a right of contact. This interpretation is not obviously mistaken. Second, even assuming that the relinquishment agreement did retain Alden's right of contact, Alden cannot be heard now to claim that it was an obvious mistake, for in the superior court he adamantly insisted that the court enforce the agreement.

i. Master Hitchcock did not make an obvious mistake by interpreting the relinquishment agreement as not preserving a right of contact.

Master Hitchcock concluded that the relinquishment agreement did not preserve Alden's right to contact his children. Because Master Hitchcock was not obviously mistaken in his interpretation of the relinquishment, there is no plain error.

¹⁶ The relinquishment deemed "conditional" in *Keith M.W.* contained such language: "If the adoption [by the Wilsons] is not completed, I understand that this relinquishment will be voided." 79 P.3d at 627.

The relinquishment agreement stated generally that Alden retained certain rights:

I give this relinquishment in accordance with AS 25.23.180. Subject only to those rights specifically retained as set forth in this relinquishment, I voluntarily relinquish to the Department of Health and Social Services . . . any and all rights and responsibilities of a parent with respect to these children.

(Emphasis added.) The right of contact was the only retained right specifically mentioned by the relinquishment.

[Paragraph] 7. I retain the right of contact with my children to be arranged in advance with the adoptive parents, in their sole discretion based on the best interests of the children. Such contact includes visitation, writing letters, and the exchange of photographs and gifts.

Under this provision, Alden's "right of contact" with his children is subject to the "sole discretion" of the adoptive parents in determining the children's best interests. It is, therefore, quite circumscribed. Master Hitchcock accordingly determined that this paragraph did not actually preserve a "right" of contact. He found that "the relinquishment was not conditioned on the provision of visitation rights. Paragraph 7 of the document provides a 'right of contact' but conditions it on the discretion of the adoptive parents 'based on the best interests of the children.'" Because this interpretation was not mistaken (much less obviously mistaken), we decline to find the enforcement of the relinquishment to be plain error.¹⁹

¹⁹ Master Hitchcock did not address whether the relinquishment merely expressed Alden's desire that any future adoption decree include a visitation provision. Nor do we. Because superior courts are afforded discretion to fashion open adoption decrees, AS 25.23.130(c), *Matter of A.F.M.*, 960 P.2d 602, 605-06 (Alaska 1998), a natural parent is entitled to request the inclusion of visitation rights in a future decree.

(continued...)

II. Even assuming that the relinquishment improperly purported to preserve a right of contact, the superior court did not commit plain error in enforcing the relinquishment.

Assuming *arguendo* that the relinquishment agreement improperly purported to preserve a right of contact, enforcing the relinquishment was not an obvious mistake because Alden demanded that Master Hitchcock and the superior court enforce the relinquishment agreement. On appeal, Alden claims that the superior court made an obvious mistake by not recognizing that Alden was asking for the enforcement of a void agreement. This position is not tenable. According to Alden, the superior court's purported mistake consisted of failing to void a "conditional" relinquishment *sua sponte* even though Alden himself demanded enforcement below. There is no obvious mistake under these circumstances.²⁰

B. The Master's Finding that Evidence Supported the Department's Decision To Deny Visitation Was Not Clearly Erroneous.

Alden has not been allowed any contact with his children since they were removed from Meg's home in October 2001. Alden argued below that he "should be allowed reasonable visitation with his children" in accordance with the terms of the relinquishment agreement. Master Hitchcock upheld the department's decision to deny visitation. He ruled "that the Department is soundly exercising its discretion, based on the expert opinion of the children's therapists, in presently restricting contact between

¹⁹ (...continued)

Alaska's general prohibition on conditional relinquishments forbids, however, the conditioning of a voluntary relinquishment of parental rights on the eventual inclusion of such visitation rights.

²⁰ See *Barrett v. State*, 772 P.2d 559, 568-69 n.10 (Alaska App. 1989) (discussing doctrine of invited error: party that requested instruction not entitled to obtain reversal based on giving of instruction).

[Alden] and the children."

On appeal, Alden asserts that Master Hitchcock's finding is clearly erroneous because "[t]here is no evidence which supports the continued denial of [Alden's] right to contact." Because the record contains ample evidence supporting Master's Hitchcock's finding, we affirm.

Master Hitchcock reviewed various documents submitted by the department, including the recommendations of the children's therapists and a psychological evaluation of Alden. (Master Hitchcock also reviewed letters and certificates submitted by Alden.) A review of this evidence does not leave us with the firm conviction that Master Hitchcock was mistaken. Contrary to Alden's assertion that "no evidence" supports the denial of visitation, the documentary evidence shows clearly that contact is not currently in the best interests of the children. Moreover, Alden has not submitted any evidence demonstrating that visitation serves the best interests of the children.

Master Hitchcock reviewed a December 1, 2003 letter and a February 19, 2004 affidavit from an outpatient therapist who had treated Alden Jr. since May 2001. In the letter, the therapist wrote: "[Alden Jr.] should not have any contact with his biological father at this time. 'Any contact' would include telephone and written correspondence as well as face to face." The therapist listed several reasons why there should be no contact:

Contact at this time could destabilize [Alden Jr.] . . . [Alden Jr.] would have increased difficulty with concentration, attention, impulsivity, and oppositional behavior . . . [Alden Jr.] would use the concept of a future relationship with his biological father as a reason to defy adult authority figures and act out with negative behavior towards others. In the past when [Alden Jr.] acts out he is frequently a danger to himself and others.

He concluded that "[Alden Jr.] should be successfully placed in a permanent placement for a minimum of one year prior to considering introducing the relationship of his biological father." He repeated these conclusions in his affidavit.

The department also submitted a February 19, 2004 affidavit from a therapist who had treated Neil for the past three years. The affidavit described Neil as a "severely emotionally disturbed child who is very aggressive, oppositional and defiant, has ADHD, pervasive development delays, enuresis, encopresis and attachment disorder." The therapist believed that Neil "should not have any contact with his biological father." In her opinion, "[c]ontact with his biological father will result in increased difficulties maintaining [Neil] in his home as [Neil] would become increasingly aggressive, defiant and oppositional, his enuresis and encopresis will increase tremendously." Moreover, before there is any consideration of introducing Neil to his father, "[Neil] needs to show signs of stability and progress with his behavioral issues"

Both therapists described the results of reintroducing the children to their father in a joint letter. The letter stated that "[i]t is difficult to evaluate the possible father-son relationship that the boys might develop in the future without having any credible evaluations of [Alden, Sr.]." They warned, however, that "[a]ny contact, and certainly any inappropriate contact, that the boys might have with their biological father could cause them to regress significantly Hence, beginning a relationship with him at this time . . . is only going to make the boys' lives more confusing and problematic."

Master Hitchcock also reviewed documents submitted by Alden in support of his motion to enforce his visitation rights. This evidence consisted of a letter from an outpatient clinic that had treated Alden for his drug problems following his release from federal prison, a letter from a halfway house where Alden had stayed after release from

prison, various occupational and religious certificates, and a letter from Alden's probation officer. These documents supported Alden's contention that he is sober and working. They did not, however, provide any evidence of his children's needs or any evidence that contact with Alden serves their best interests.

Because the record contained substantial evidence that even minimal contact between Alden and his children would have negative consequences, and because Alden submitted no evidence that contact would serve their best interests, there is no hint of clear error on this issue.

C. Alden Is Not Entitled to Relief Under *Rita T. v. State*.²¹

Rita T. v. State announced that a parent whose parental rights have been involuntarily terminated is entitled to a hearing to review the termination order, upon a showing that the parent has overcome the problems that lead to termination and is now capable of properly caring for the child.²² This entitlement promotes the purposes of title 47 of the Alaska Statutes by enlarging the potential supply of permanent care givers and reuniting families.²³ It was based on the proposition that allowing a parent who is capable of providing proper care to regain her parental rights is preferable to allowing a child who remains "a ward of the court . . . to spend his or her entire minority in a

²¹ 623 P.2d 344 (Alaska 1981). The department's concern that *Rita T.* reflects an anachronistic emphasis on family reunification is misplaced. *Rita T.* does not privilege a parent's desire to regain custody over the best interests of the child. Entitlement to a *Rita T.* hearing requires a parent to show both that she is rehabilitated and that she is currently capable of providing "the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child[.]'" *Id.* at 347 (quoting AS 47.05.060).

²² *Id.* at 347.

²³ *Id.*

succession of foster homes."²⁴

We have never decided whether the right announced in *Rita T.* is available to parents who voluntarily relinquish their parental rights pursuant to AS 25.23.180 and we need not address this issue here. Even assuming that Alden could seek relief under *Rita T.*, the superior court did not abuse its discretion by holding that Alden failed to show good cause.

Good cause for a *Rita T.* hearing can "be established if the parents showed that it would be in the best interests of the child to resume living with them because they have sufficiently rehabilitated themselves so that they can provide proper guidance and care for the child."²⁵ A parent can provide proper guidance and care if he can "provide the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child[.]'"²⁶

Master Hitchcock concluded that Alden had not shown good cause:

Looking at the factual basis for the adjudication of these Children in Need of Aid, and the subsequent treatment efforts of [Alden], I find the evidence does not support a finding that he has 'sufficiently rehabilitated' in order to reassume custody of these children. I base that conclusion in large part upon the special needs of the children and the expert opinions of their therapists. I do not find that good cause has been shown to warrant setting aside the relinquishment

Alden contends that the superior court abused its discretion because Master Hitchcock's finding relied on the reports of the children's therapists, who had never met Alden. Accordingly, the therapists' recommendations relied only on their contact with

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* (quoting AS 47.05.060).

the children and their knowledge of the children's history.

Master Hitchcock's partial reliance on the opinions of the children's therapists was wholly appropriate.²⁷ Alden's ability to adequately care for his children depends not only on his rehabilitation but also on the needs of his children. *Rita T.* does not deem a parent who has "rehabilitated" himself automatically capable of caring for his children. *Rita T.* requires a parent to have the capability of providing for the individual needs of the child. Good cause exists only for those parents "who can now provide the care and guidance 'that will serve the moral, emotional, mental and physical welfare of the child'"²⁸ Consequently it is not only appropriate but necessary for a court to consider the needs of the child who is the subject of a *Rita T.* motion. To do that, the court properly considered evidence from the children's therapists.

Master Hitchcock's finding that Alden had not shown good cause to believe that he was capable of providing for the needs of his children was well supported by the record. According to the reports submitted by the children's therapists, Alden's children have very demanding needs: "Very skilled therapeutic foster parents with additional case manager and activity therapy support are, at times, taxed to their limit [in] maintaining the boys adequately." The therapists opined that a care giver for the children should have "stellar therapeutic parenting skills, saintly patience, and an extensive working knowledge of developmental issues of emotionally disturbed children."

The psychological evaluation of Alden conducted by Dr. Thomas McKnight suggests that Alden's parenting abilities do not approach these requirements. Dr.

²⁷ Because Master Hitchcock reviewed evidence both of Alden's rehabilitation and parenting capabilities and the special needs of his children, we do not decide whether a court would be justified in relying solely upon evidence provided by a child's therapist.

²⁸ *Rita T.*, 623 P.2d at 347.