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MEMORANDUM* OPINION OF THE NINTH CIRCUIT (JULY 6, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANETTE DUNKLE,

Plaintiff-Appellant,

v.

JENNIFER DALE, In Her Individual Capacity; ET AL.,

Defendants-Appellees.

No. 17-35525

D.C. No. 3:14-cv-00005-RRB

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Submitted June 12, 2018**

Before: THOMAS, Chief Judge, and CALLAHAN and BEA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The Alaska Office of Children's Services took custody of A.F. within days of her birth without first obtaining a warrant because her mother, Janette Dunkle, had a long history of substance abuse, and opiates were found in A.F. when A.F. was born. Dunkle filed this action alleging that her constitutional rights were violated when A.F. was removed from her custody. After a remand from the Ninth Circuit, the district court granted summary judgment in favor of the defendants, certain Alaska social workers, and an Alaska State Trooper all of whom were involved in the removal of A.F from Dunkle's custody. Dunkle appeals arguing that the district court erred (1) in granting the defendants qualified immunity pursuant to our opinion in *Kirkpatrick v. City of Washoe*, 843 F.3d 784 (9th Cir. 2016) (en banc); and (2) in ruling that the Jennifer Dale, a social worker, was entitled to summary judgment on Dunkle's claim that Dale had given false evidence in the state proceedings that led to the termination of Dunkle's parental rights to A.F.[1]

1. In 2016, in *Kirkpatrick*, 843 F.3d 784, we held that it violated a mother's constitutional rights to take custody of a newborn baby in a hospital because the baby tested positive for illegal drugs without first obtaining a warrant. However, we further held that at that time, "[n]o matter how carefully a social worker had read our case law, she could not have known that seizing [the baby] would violate federal constitutional law," and thus, "[w]ithout that fair notice, the social workers in this case are entitled to qualified immunity." *Id.* at 793.

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[1] Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

In our case, the defendants took custody of A.F. in 2012, four years before our decision in *Kirkpatrick*. We are bound by our opinion in *Kirkpatrick* that social workers would not have known prior to our decision that taking a newborn baby who tested positive for illegal drugs without a judicial warrant violated the mother's constitutional rights. Accordingly, we affirm the district court's grant of qualified immunity in favor of the defendants. *See Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1065 (9th Cir. 2006) ("Our task is to determine whether the preexisting law provided the defendants with 'fair warning' that their conduct was unlawful.").

2. The district court recognized that a prima facie showing that Dale made deliberate falsehoods to the Alaska court would deprive her of the shield of qualified immunity. *Chism v. Washington State*, 661 F.3d 380, 393 (9th Cir. 2011). However, Dunkle had the burden of making a substantial showing that Dale deliberately lied or recklessly disregarded the truth, and that, but for her dishonesty, the state courts would not have terminated Dunkle's parental rights. *Id.* at 386.

The evidence in the record rebuts Dunkle's assertion that Dale deliberately lied. The most that Dunkle has shown is that Dale's statements may have reflected a misunderstanding or have been based on an incomplete record. Furthermore, the decisions by the Alaska courts show that Dunkle's parental rights were terminated based on Dunkle's history of drug use and failure to seek adequate treatment, her history of entering into destructive and abusive relationships, and her failure to visit A.F. after A.F. was approximately a month old. *Findings, Conclusions, and Order*

Terminating Parental Rights and Responsibilities, Disposition, and Permanency Findings, *In re A.F.*, No. 3PA-12-3CN (Alaska Super. Ct., Oct. 22, 2012). Dunkle's relationship history, her drug use, and her failure to visit A.F. soon after A.F. was born are undisputed facts. Thus, Dale's representations to the state courts, even if misleading, were not material to the state courts' decisions. We affirm the district court's dismissal of Dunkle's claims against Dale.

AFFIRMED.[2]

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[2] Appellees' motion to supplement the record for judicial notice and to file the document is granted. The proffered transcript is ordered filed under seal. Appellant's motion to strike appellees' supplemental except of record is denied.

ORDER OF THE NINTH CIRCUIT (JANUARY 29, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANETTE DUNKLE,

Plaintiff-Appellant,

v.

JENNIFER DALE,
in Her Individual Capacity; ET AL.,

Defendants-Appellees.

No. 17-35525

D.C. No. 3:14-cv-00005-RRB
District of Alaska, Anchorage

Appellant's unopposed motion pursuant to 9th Cir. R. 27-14 for leave to transmit physical exhibit (Docket Entry No. 11) is granted. Appellant shall submit 4 copies of the exhibit within 7 days of the date of this order. Appellant's motion for miscellaneous relief (Docket Entry No. 10) is denied as moot.

FOR THE COURT:

Molly C. Dwyer
Clerk of the Court

By: Halina Larman
Deputy Clerk
Ninth Circuit Rule 27-7

JUDGMENT IN A CIVIL CASE OF THE U.S. DISTRICT COURT OF ALASKA (JUNE 7, 2017)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE, ET AL.,

Defendants.

Case Number 3:14-cv-00005-RRB

Before: Ralph R. BEISTLINE,
United States District Judge.

DECISION BY COURT.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

THAT the plaintiff, Janette Dunkle, take nothing, that the action be dismissed on the merits, and that the defendant, Jennifer Dale, et al., recover of plaintiff defendant's costs of action in the amount of $_____ and attorney's fees in the amount of $_____ with post

judgment interest thereon at the rate of 1.16% as provided by law.

Note: Award of prejudgment interest, costs and attorney's fees are governed by D. AK. LR 54.1, 54.3, and 58.1.

APPROVED:

/s/ Ralph R. Beistline
Ralph R. Beistline
United States District Judge

Lesley K. Allen
Clerk of Court

Date: June 7, 2017

SECOND ORDER OF THE U.S. DISTRICT COURT OF ALASKA REGARDING DOCKET 60 (MAY 26, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

Before: Ralph R. BEISTLINE,
Senior United States District Judge.

Pending before the Court is Defendants' Motion for Summary Judgment at Docket 60, which was previously granted in part.[1] Counts 2 and 4 required further briefing, which has been filed. The Court refers to its prior order for a discussion of the factual background and standard of review.

[1] Docket 144.

I. Discussion

Count 2 alleges a violation of Plaintiff's Fourteenth Amendment right to "Familial Association."[2] Plaintiff alleges that "there existed a clearly established due process right not to be subjected to false accusations on the basis of false evidence that was deliberately fabricated by the government," and "that a reasonable agent in Defendants' situation would know, or should know, that it is unlawful to lie, fabricate evidence, and/or suppress material exculpatory evidence . . . to influence judicial decision making." Count 4 alleges abuse of process by misusing governmental process to question, seize, examine, remove, and detain A.F., to bring A.F. and her family into dependency proceedings, and by testifying falsely during proceedings.[3]

Count 2 and Count 4 each have been dismissed against all but Defendant Dale. Both turn on Plaintiff's allegations that Defendant Dale lied during various points in the process that led to the termination of Plaintiff's parental rights to A.F. Plaintiff's briefing identified eight statements made by Dale that she alleged were false.[4] The Court noted that Defendant offered plausible explanations for each "false statement" in the Reply brief, and asked for further briefing from Plaintiff.

In order for Plaintiff's claim to survive, she must (1) make a substantial showing of Dale's deliberate falsehood or reckless disregard for the truth, and (2)

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[2] Docket 1 at 16-19.

[3] Docket 1 at 21-22.

[4] Docket 130 at 15-16. The Court's prior order mistakenly stated there were nine statements, rather than eight.

establish that, but for her dishonesty, the outcome would have been different.[5] The Court now considers each alleged falsehood in turn, including additional false statements alleged in the sur-reply.

A. Plaintiff Alleges That Dale Said a "Report of Harm" Was Made by the Hospital, When Really It Was a "Report of Concern"

Plaintiff seems to suggest that Defendant Dale falsely testified that there was a "report of harm" in order to mislead the court into believing that the situation was worse than it actually was. Dale suggests that the hospital social worker testified that she notified OCS by "making a report of harm."[6] However, a review of the hospital social worker's deposition reveals that the hospital social worker testified that she felt the situation "warranted a report of incident."[7] She also testified that a "report of concern" and "report of harm" are often used interchangeably, although she uses and prefers "report of concern." Dale testified at her deposition that she was unfamiliar with the term "report of concern" in this context, although she had used that term in the context of licensing foster homes.[8]

The Court finds that if Plaintiff made a statement that a "report of harm" was issued, rather than a "report of concern," it does not rise to the level of a fabrication.

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[5] *See Chism v. Washington State*, 661 F.3d 380, 386 (9th Cir. 2011).

[6] Docket 140 at 7, *citing* the social workers' deposition at Docket 139-5.

[7] Docket 140-5 at 35.

[8] Docket 140-4 at 45-47.

B. Plaintiff Alleges That Dale Falsely Testified That Plaintiff Used Illegal Substances Before the Birth of A.F.

In her sur-reply, Plaintiff concedes that her "last use of illegal substances was at the end of August 2011," which was five months into her pregnancy, but Plaintiff complains that Dale falsely portrayed that she had "used illegal drugs during her entire pregnancy."[9] It is undisputed that Dunkle used illegal substances while she was pregnant with A.F. Dunkle had the opportunity to testify that she was in treatment for the last few months of her pregnancy. Even if Dale did make such a statement (which is not reflected in the record), this Court has no reason to believe the outcome would have been any different.

C. Plaintiff Alleges That Dale Falsely Represented That the Positive Test for Hydrocodone Was Not the Result of Taking Prescription Hydrocodone

Dale argues that both Dr. Peterson and Dr. Baldwin-Johnson concluded that Dunkle's positive opiate result was due to something other than the prescription.[10] Dr. Baldwin-Johnson specifically opined that "there is no prescription in Dunkle's medical records that would explain the high level of hydromorphone in her system."[11] Dr. Peterson was more equivocal, noting that the infant tested positive for opiates, although Suboxone specifically came out negative. But Dr. Peterson could not say with certainty that the

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[9] Docket 146 at 7 (emphasis in original).

[10] Docket 140 at 18.

[11] Docket 140-3 at 5.

infant's positive drug screen was due solely to prescribed medication.[12] Dale's testimony was not objectively false, nor was it taken in a vacuum at state court. Again, this Court has no reason to believe the outcome would have been any different had Dale testified differently.

D. Plaintiff Alleges That Dale Falsely Testified That Plaintiff Did Not Participate in J.F.'s Plan

Dale testified that, "I met with her [Dunkle] this fall [of 2011] and we created a new case plan when she came to me and said that she was ready to work her case plan, and I have seen no work on any case plan since then."[13] Dale testified that Dunkle's case plan required her to complete a substance abuse assessment with an OCS provider.[14] Dale does not dispute that this was the plan, and concedes that she sought treatment through Dr. White, who was not approved by OCS as part of the plan. Dunkle's case plan required domestic violence classes, and the record indicates her last class was on January 31, 2011, a year before the petition to remove A.F. Dunkle's case plan required her to live somewhere other than with her mother, yet Dunkle planned to return to her mother's home with A.F. upon leaving the hospital. Dunkle does not dispute that the OCS case file was devoid of evidence of her participation in any programs. Rather, she suggests that her participation just never made it into the file. Dunkle's failure to

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[12] Docket 140-2 at 18, 41.

[13] Docket 26-3 at 8, 13.

[14] Docket 140 at 8.

keep documentation of her efforts does not render Dale's testimony false.

E. Plaintiff Alleges That Dale Falsely Stated That Plaintiff Did Not Keep in Touch with Her

Dale's testimony was that Dunkle did not stay in "regular contact."[15] The recorded conversation at the hospital when Dale seized A.F. includes excuses by Dunkle as to why she had not been in touch. A recorded telephone conversation on August 31, 2011, between Dale and Dunkle documents Dale's complaint that she had left "multiple messages" for Dunkle, and Dunkle's various excuses.[16] Dunkle now claims in her briefing (citing only her own deposition) that she "attempted to contact Dale and left messages and sent letters by certified mail with no success."[17] Dunkle provides no certified mail receipts as evidence. The Court sees no evidence that Dale's testimony in this regard was false.

F. Plaintiff Alleges That Dale Falsely Stated That Plaintiff Had Abandoned A.F.

Plaintiff portrays her failure to visit A.F. in foster care as a result of Dale's requirement that she not interact with J.F., her other child in the same foster home. Dunkle argues that "Dale engineered a situation to prevent Dunkle from seeing A.F.–by leaving both children at the same foster parent and ordering her to ignore J.F."[18] But the Supreme Court

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[15] Docket 26-3 at 10.

[16] Docket 140-8.

[17] Docket 146 at 8.

[18] Docket 146 at 9.

of Alaska found that Dunkle was out of contact after only a few visits with A.F., not appearing again until several months later in time for the termination trial.[19] Moreover, Dunkle conceded at the termination trial that she only attended about five visits with A.F. in March 2012, and after that she was with A.F.'s father, Joshua Fleetwood, who did not want law enforcement to follow her and thus locate him.[20] Dunkle blamed Fleetwood for her failure to visit with A.F. Having essentially conceded abandonment, regardless of the excuses, Dunkle cannot now claim that Dale "falsely accused" her of abandoning A.F.

G. Plaintiff Alleges That Dale Misrepresented the Facts Surrounding Injuries Sustained by J.F.

Dale complains that "[t]his allegation was not pled in the complaint and is vague. As a result, this claim must be dismissed as it was never sufficiently pled."[21] Plaintiff does not respond to this argument.

H. Plaintiff Alleges That Dale Misrepresented to the Court That Plaintiff Posed a Substantial Risk to A.F.

Dale argues that a review of her testimony at the probable cause hearing "does not reveal any such testimony, although defendants' arguments in support of emergency removal support the conclusion that A.F. was not safe in Dunkle's custody for any length of time," for all the reasons discussed in this motion

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19 2014 WL 1357038 (Alaska Apr. 2, 2014).

20 Docket 140-9.

21 Docket 140 at 18.

practice.[22] "Dunkle had already harmed A.F. before birth and continued to place A.F.'s life in jeopardy by breastfeeding against medical advice. Dunkle also ignored the need to monitor A.F. for symptoms of withdrawal which required an immediate medical response."[23] Plaintiff does not respond to this explanation in her sur-reply, but the Court presumes that Plaintiff's claim refers to the "false statements" generally, all of which have been addressed herein.

I. Plaintiff Alleges That Contrary to Her Testimony, Dale Never Spoke with Dr. Peterson[24]

Defendant did not get the opportunity to respond to this allegation, but as this Court observed in its prior order, "[s]omeone can be heard on the recording indicating that Dr. Peterson wanted to speak with the social workers before they left. They exited the room, presumably to speak with the doctor, and upon returning they indicated they had spoken with the doctor about the infant's needs, including the signs of withdrawal that the infant may show."[25] No reasonable trier of fact would conclude that Dale's statement that she spoke with Dr. Peterson was untrue.

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[22] *Id.*

[23] *Id.*

[24] Docket 146 at 3.

[25] Docket 144 at 3.

J. Plaintiff Alleges That Contrary to Dale's Testimony, Supervisor Karen Morrison Never Approved Emergency Assumption of Custody[26]

This allegation was also raised in the sur-reply. Morrison's deposition excerpts are found in the record, where she testified that she did not recall who authorized the removal of A.F. from the hospital more than two years earlier, noting that it was not in her notes, and conceding that "I don't know if it was me."[27] Accordingly, Dale's testimony was uncontradicted and not clearly false.

II. Conclusion

The Court agrees with Defendant that Dunkle has failed to support her allegation that Dale fabricated evidence against her. She has not made a substantial showing of any deliberate falsehood or reckless disregard for the truth by the social worker. Even giving Dunkle the benefit of the doubt, she has also failed to establish that the outcome would have been different. In light of the foregoing the remainder of Docket 60 is GRANTED, Counts 2 and 4 are dismissed with prejudice, and this matter is DISMISSED in its entirety.

IT IS SO ORDERED this 26th day of May, 2017, at Anchorage, Alaska.

/s/ Ralph R. Beistline
Senior United States District Judge

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[26] Docket 146 at 3.

[27] Docket 70-13 at 4.

ORDER OF THE U.S. DISTRICT COURT OF ALASKA REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT AND PARTIAL SUMMARY JUDGMENT (DOCKET NOS. 60, 69) (APRIL 21, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

Before: Ralph R. BEISTLINE,
Senior United States District Judge.

Pending before the Court are multiple motions, including Defendants' Motion for Summary Judgment at Docket 60, and Plaintiff's Motion for Partial Summary Judgment at Docket 69.

I. Background

Plaintiff gave birth to a baby girl, A.F., on January 17, 2012.[1] An emergency Caesarean section was performed after it was determined that there was insufficient amniotic fluid to support the baby.[2] A.F. weighed 4 pounds 10 ounces and tested positive for opiates in her system.[3]

Plaintiff already had a history with the Office of Children's Services ("OCS"), which had taken custody of her older child, J.F., in 2009 when the child was 2 years old.[4] Because of Plaintiff's extensive history of substance abuse and violent domestic relationships, social workers with OCS had previously created a case plan to attempt to reunite Plaintiff with J.F.[5] These efforts were reportedly unsuccessful, as proceedings to terminate parental rights to J .F. had commenced at the time of A.F.'s birth, and Plaintiffs parental rights and responsibilities as to J.F. were ultimately terminated by the Alaska Superior Court on March 27, 2012.[6]

Plaintiff had a prescription for Norco, an opiate, for pain management which had been prescribed previously by an emergency room doctor. She also had a

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[1] Docket 1 at 5.

[2] *Id.*

[3] Docket 26, Exhibit 3. Plaintiff blamed the positive opiate test on prescription drugs, of which she had failed to inform her obstetrician. Docket 61 at 2.

[4] Docket 26, Exhibit 3 at 5.

[5] *Id.* at 11.

[6] *Id.* at Exhibit 5.

prescription for Subutex, prescribed as part of her substance abuse recovery program. The hospital social worker, Kirsten Nelson, confirmed these prescriptions, as reflected in her notes dated January 19.[7] Nevertheless, shortly after A.F.'s birth, Nelson reported the birth and positive drug screen of A.F. to OCS.[8] The report to OCS was due to an unspecified state law requirement due to Plaintiff's history with OCS.[9] OCS indicated to Nelson late on January 19 that A.F. could be discharged in her mother's care, and OCS would follow up at home.[10] However, on the morning of January 20, 2012, social workers Jennifer Dale and Christine Sheriden, along with Trooper Lopez,[11] assumed emergency custody of A.F. pursuant to Alaska Stat.§ 47.10.142(a)(3) and filed a petition with the state court alleging A.F. was a "child in need of aid" ("CINA").[12] Defendants did not have a court order to remove the child. The seizure of the infant by OCS was recorded by the Plaintiff, and the Court has listened to that recording.[13] Trooper Lopez entered the room and asked the grandparents to leave while the social workers, Sheridan and Dale, met with Plaintiff. The social workers encouraged Plaintiff to

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7 Docket 130-9.

8 Docket 1 at 8-9.

9 *Id.* at 5.

10 Docket 130-9 at 3.

11 Plaintiff alleges there was a second Trooper present, as well. Docket 130 at 13.

12 Docket 1 at 5-7; Docket 26, Exhibit 3.

13 Docket 67.

continue on her path to sobriety and they explained that Plaintiffs failure to follow her case plan made it necessary for them to take custody of the infant for the weekend, pending a hearing on Monday. Although Plaintiff objected and argued that she had been participating in the treatment plan, the social workers told her that her arguments could be addressed at the hearing on Monday. They explained that because her participation in treatment plans (if any) had not been documented, they could not be sure yet that she was safe around children, and that the hearing scheduled for Monday was her opportunity to show that she had been participating in her case plan. Someone can be heard on the recording indicating that Dr. Peterson wanted to speak with the social workers before they left. They exited the room, presumably to speak with the doctor, and upon returning they indicated they had spoken with the doctor about the infant's needs, including the signs of withdrawal that the infant may show. Plaintiff was very cooperative, though tearful, throughout the process, although Plaintiff's mother voiced her objections. Multiple overlapping conversations between the Trooper, the grandparents, the social workers, and Plaintiff made the recording difficult to understand at times.[14] Defendant Sheridan can be heard at one point advising Plaintiff as how best to communicate with her caseworker (via email) in order to document their interactions. The social workers suggested that Plaintiff's mother made communication more difficult, and encouraged Plaintiff to stay in more direct contact with OCS.

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14 The recording device remained in Plaintiffs hospital room, so any conversation with the doctor was not recorded.

Defendants have asserted that the totality of the circumstance—including Plaintiff and A.F. testing positive for opiates, as well as Plaintiff's untreated substance abuse, violent relationships, and failure to comply with her case plan with J.F.—placed A.F. at substantial risk for abuse and neglect.[15]

In accordance with Alaska Stat. § 47.10.142(d), a temporary custody hearing was held three days later to evaluate the temporary custody by OCS.[16] The court found that remaining in Plaintiff's custody put A.F. at further risk of harm and A.F. was to remain in the custody of OCS until a hearing on February 2, 2012.[17]

At the February 2, 2012 hearing, Plaintiff challenged the basis and probable cause for removal of A.F. from her custody. During the hearing, Defendant Dale, the social worker who removed the child from the hospital, testified and was cross-examined by Plaintiff's counsel, and the court reviewed the evidence supporting the removal of A.F. from Plaintiff's custody. The state court found that there was probable cause to believe that A.F. was a CINA, and found that placement with Plaintiff was contrary to the child's welfare.[18] The court committed A.F. to the temporary custody of OCS pending the adjudication phase of proceedings. The court issued an order of adjudication on April 23, 2012, finding that, based on a preponderance of evidence, A.F. continued to be a CINA and

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[15] Docket 26 at 6.

[16] *Id.* at Exhibit 2.

[17] *Id.* at 3.

[18] *Id.* at Exhibit 3.

that it was contrary to the welfare of A.F. to return her to Plaintiffs custody.[19] The court held a hearing regarding the parental rights and responsibilities of Plaintiff for A.F. and on October 22, 2012, ultimately granted OCS's petition to terminate parental rights.[20] Plaintiff alleges that "Jennifer Dale did everything possible to terminate Janette Dunkle's parental rights by perjured testimony, fabrication of evidence, and withholding exculpatory evidence" at each of these hearings.[21]

Plaintiff appealed the court's decision to the Alaska Supreme Court.[22] The Alaska Supreme Court supported all findings, and on April 2, 2014, affirmed the state court's order terminating parental rights.[23] Plaintiff subsequently filed a complaint before this Court under 42 U.S.C. § 1983 based on allegations that Defendants violated her right to be free from unreasonable searches and seizures after social worker Jennifer Dale assumed emergency custody of Plaintiff's newborn infant A.F. on January 20, 2012. Plaintiff also has asserted loss of familial association, warrantless seizure, false testimony, fabricated evidence, intentional infliction of emotional distress, abuse of process, and negligence as a result of the emergency removal of her child. Plaintiff primarily accuses social worker Jennifer Dale as the person who "seized" the child, and describes the other defendants as "alter

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19 *Id.* at Exhibit 6.

20 *Id.* at Exhibit 8.

21 Docket 130 at 14-15.

22 2014 WL 1357038 (Alaska).

23 *Id.*

egos" who are "vicariously liable" and who "agreed upon, ratified, and/or conspired together" in the removal of the child A.F. At the heart of Plaintiff's complaint is the assertion that "the social workers lied, fabricated evidence, and failed to provide exculpatory evidence" during the termination proceedings.[24]

This Court previously dismissed this matter on collateral estoppel grounds, finding that Plaintiff was precluded from relitigating the issues in the present suit.[25] But the Ninth Circuit disagreed, finding that Plaintiff's "claim is not identical to any issue adjudicated in CINA proceedings."[26] "Alaska law permits social workers . . . to take emergency custody of a child if they determine 'that immediate removal from the child's surroundings is necessary to protect the child's life or that immediate medical attention is necessary,' Alaska Stat. § 47.10.142(a)(2), but it does not require the state courts adjudicating CINA cases to make such a finding."[27] Nor was the issue actually litigated, the Court of Appeals found, because Plaintiff never challenged the initial removal of A.F. at the state court level.[28] The Ninth Circuit also determined that issue preclusion did not bar Plaintiffs claim that social worker Jennifer Dale fabricated statements in her emergency petition to have A.F. declared a CINA.[29] Although the

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[24] Docket 130 at 9.

[25] Docket 83.

[26] Docket 99 at 2.

[27] *Id.* at 3.

[28] *Id.*

[29] Docket 99 at 3.

Ninth Circuit acknowledged that the outcome in state court implied that the judge found her credible, the state court was not asked to resolve and did not determine whether any of Dale's statements were fabricated.[30] Accordingly, this matter is again before this Court.

II. Standard of Review

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.[31] The moving party bears the initial burden of proof for showing that no fact is in dispute.[32] If the moving party meets that burden, then it falls upon the non-moving party to refute with facts that would indicate a genuine issue of fact for trial.[33] Summary judgment is appropriate if the facts and allegations presented by a party are merely colorable, or are not significantly probative.[34]

III. Discussion

Defendants argue that Plaintiffs parental rights to A.F. ultimately were terminated under a higher burden of proof than that required to remove A.F.

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[30] *Id.* at 4.

[31] Fed. R. Civ. P. 56(c).

[32] *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

[33] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

[34] *Id.*; *see also In re Lewis*, 97 F.3d 1182, 1187 (9th Cir. 1996); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1995).

from her custody, and that any claim that the social worker lacked sufficient evidence to initially remove the infant became moot when the state court terminated Plaintiffs parental rights under that higher burden of proof.[35] Additionally, Defendants argue that the social workers are entitled to absolute and discretionary function immunity from civil proceedings in this matter.[36] Finally, Defendants put forth state immunity defenses to the three state law claims.[37]

With respect to the first argument, the Ninth Circuit has previously found that while a court's subsequent findings can certainly "buttress the conclusion" that a child's removal was justified in light of the situation, "the juvenile court's findings are not relevant to whether a sufficient exigency existed at the time of the removal to justify the warrantless action because such an inquiry is to be based on the information that [the social worker] had at the time."[38] The Court considers the other arguments in the briefing.

A. Fourteenth Amendment (Search & Seizure) and Qualified Immunity

Count 1 alleges a wrongful seizure of a child, without a warrant or exigent circumstances.[39] Title 42

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[35] Docket 61 at 2 3.

[36] *Id.* at 26-31.

[37] *Id.* at 26.

[38] *Mabe v San Bernardino Cty., Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1110 (9th Cir. 2001).

[39] Docket 1 at 11-16. Plaintiff also makes several arguments under Count 1 alleging that the policies and/or practices of OCS, inherently violate the 14th Amendment, including failure to

Untied States Code, section 1983 provides a remedy for violations of rights secured by the Constitution by persons acting under the color of state law. The Ninth Circuit recently has articulated the relevant law:

> Two provisions of the Constitution protect the parent child relationship from unwanted interference by the state: the Fourth and the Fourteenth Amendments. First, parents "have a well-elaborated constitutional right to live" with their children that "is an essential liberty interest protected by the Fourteenth Amendment's guarantee that parents and children will not be separated by the state without due process of law except in an emergency." . . . Second, the Fourth Amendment safeguards children's "right . . . to be secure in their persons . . . against unreasonable . . . seizures" without a warrant, U.S. Const. amend. IV, although we similarly recognize an exception to the warrant requirement where the exigencies of the situation are so compelling that a warrantless seizure is objectively reasonable under the Fourth Amendment. . . . Therefore, we have said that the tests under the Fourth and Fourteenth Amendment for when an official may remove

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train/supervise. Docket 1 at 13-14. Defendants argue that Ms. Dunkle' s claims related to custom and practice must fail as a matter of law, because Ms. Dunkle has not sued a municipality or agency, but has sued individuals, which makes any claim related to custom and practice irrelevant. The Court agrees.

> a child from parental custody without a warrant are equivalent.[40]

Accordingly, it is clear that a parent has a constitutionally protected right to the care and custody of his or her children and that he or she cannot be summarily deprived of that custody without notice and a hearing, except when the children are in imminent danger.[41] The courts recognize an "exception to the warrant requirement where the exigencies of the situation are so compelling that a warrantless seizure is objectively reasonable under the Fourth Amendment."[42]

The doctrine of qualified immunity[43] shields individual officers "from liability for civil damages insofar as their conduct [did] not violate clearly established . . . constitutional rights of which a reasonable person would have known."[44] "Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal

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[40] *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 788-89 (9th Cir. 2016) (en banc) (internal citations omitted).

[41] *Ram v Rubin*, 118 F.3d 1306, 1310 (9th Cir. 1997) (citing *Caldwell v. LeFaver*, 928 F.2d 331, 333 (9th Cir. 1991)).

[42] *Kirkpatrick v. Cty. of Washoe*, 843 F.3d 784, 789 (9th Cir. 2016) (en banc) (citing *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1294 (9th Cir. 2007)).

[43] "Because the defendants were not acting under the supervision of a court, it is the qualified immunity standard, rather than the absolute immunity standard, which must govern their conduct." *Caldwell v. LeFaver*, 928 F.2d 331, 333 (9th Cir. 1991) (citation omitted).

[44] *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

questions. When properly applied, it protects 'all but the plainly incompetent or those who knowingly violate the law.'"[45] Summary judgment based on qualified immunity is improper if, resolving all disputes of fact and credibility in favor of the party asserting the injury, (1) the facts adduced show that the officer's conduct violated a constitutional right, and (2) that right was "clearly established" at the time of the violation.[46] The court may consider either of these two prongs first, "in light of the circumstances in the particular case at hand."[47] When the law governing the official's conduct is "clearly established," the court must consider whether, under that law, a reasonable official could believe their conduct was lawful.[48] Accordingly, even if there is a question of fact as to whether Defendants violated Plaintiffs constitutional rights, Defendants are entitled to qualified immunity unless the law at the time of the infant's removal clearly established the unconstitutionality of their specific conduct.[49] The Ninth Circuit has clarified that "seizing a child without a warrant is excusable only when officials 'have reasonable cause to believe that the child is likely to experience serious bodily harm

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45 *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011).

46 *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

47 *Pearson v. Callahan*, 555 U.S. 233, 236 (2009).

48 *Rogers v. Cty. of San Joaquin*, 487 F.3d 1288, 1296-97 (9th Cir. 2007); *see also Mabe v. San Bernardino Cty, Dep't of Pub. Soc. Servs.*, 237 F.3d 1101, 1107 (9th Cir. 2001).

49 *Kirkpatrick*, 843 F.3d at 788.

in the time that would be required to obtain a warrant.'"[50]

> Officials may remove a child from the custody of its parent without prior judicial authorization only if the information they possess at the time of the seizure is such as provides reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury. . . . Summary judgment in favor of the defendants is improper unless, viewing the evidence in the light most favorable to the plaintiffs, it is clear that no reasonable jury could conclude that the plaintiffs' constitutional rights were violated.[51]

The question therefore turns on whether Defendants reasonably believed that A.F. was in "imminent danger of serious bodily harm" to justify removal without first seeking a court order.

The Ninth Circuit has specifically and recently addressed the issue of immunity of social workers

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[50] *Rogers v. County of San Joaquin*, 487 F.3d 1288, 1295 (9th Cir. 2007). In the briefing, Defendants go to great lengths to explain that "there is no authority in Alaska law for seeking a warrant for the purpose of state custody over a child." Docket 140 at 5. Defendants followed the procedures outlined in Alaska Stat. § 47.10.142 in this matter, which calls for a temporary placement hearing after a child is taken into emergency custody. The issue the constitutionality of Alaska's CINA statutes is not before this Court.

[51] *Wallis v Spencer*, 202 F.3d 1126, 1138 (9th Cir. 2000) (internal citations omitted) (emphasis added).

and police officers when seizing a child. Police officers who do not participate in the decision to remove a child, who are not "privy to any discussions, briefings, or collective decisions made by DHS in its protective-custody determination" are entitled to qualified immunity for their participation in assisting protective services in a removal.[52] Accordingly, Trooper Lopez is entitled to immunity in this instance.

In *Kirkpatrick v. Cty. of Washoe*,[53] the Ninth Circuit considered a social worker's warrantless removal of a two-day-old child from the hospital. The mother had a history of drug abuse and two other children who previously had been placed in the care of social services. The biological father brought suit under 42 U.S.C. § 1983 against the social workers and the County, claiming the removal violated the Fourth and Fourteenth Amendments.

The *en banc* court noted that "serious allegations of abuse that have been investigated and corroborated usually give rise to a reasonable inference of imminent danger sufficient to justify taking children into temporary custody if they might again be beaten or molested during the time it would take to get a warrant."[54] But "when social workers investigating suspected abuse or neglect can reasonably obtain a warrant without significantly risking serious bodily harm to the child in question, the Fourth Amendment

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[52] *Sjurset v. Button*, 810 F.3d 609, 619 (9th Cir. 2015), *cert. denied*, 137 S.Ct. 56, 196 L.Ed.2d 31 (2016).

[53] 843 F.3d 784 (9th Cir. 2016) (en banc).

[54] *Id.* at 791 (internal quotations omitted).

mandates that they do so."[55] Ultimately the court determined that the mother's drug abuse "did not pose a direct threat to [the infant] while both mother and daughter remained in the hospital, where nurses were supervising all of [the infant's] medical needs."[56] The court held that no matter how carefully a reasonable social worker had read Ninth Circuit case law, she could not have known that seizing the child would violate federal constitutional law. "Without that fair notice, the social workers in this case are entitled to qualified immunity."[57]

The facts before this Court are substantially similar to those of *Kirkpatrick*. Defendants rely on *Kirkpatrick* because the Ninth Circuit found that when the seizure occurred it was still debatable whether "the confluence of factors" in *Kirkpatrick* would support a finding of exigency. Defendants reason that since they seized the baby from the hospital prior to the *Kirkpatrick* decision, they are entitled to qualified immunity because it was not until that 2016 decision that social workers in the Ninth Circuit were on notice that drug use of a mother did not automatically pose a direct threat to a newborn while both mother and child remained in the hospital.[58]

Plaintiff, however, argues the *Kirkpatrick* decision turns on the availability of an undocumented biological father, and that the Ninth Circuit's opinion intended the availability of the father to be the critical

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[55] *Id.*

[56] *Id.*

[57] *Id.* at 793.

[58] *Id.* at 791.

variable. But the language of *Kirkpatrick* is very specific: "No Supreme Court precedent defines when a warrant is required to seize a child under exigent circumstances. And . . . none of the cases from [the Ninth Circuit] explain when removing an infant from a parent's custody at a hospital to prevent neglect, without a warrant, crosses the line of reasonableness and violates the Fourth Amendment."[59] A plain reading of *Kirkpatrick* suggests that Defendants' interpretation of the Ninth Circuit's holding is correct. It is undisputed that OCS had the following knowledge: Plaintiff had opiates in her system; the baby had been born with opiates in her system;[60] Plaintiff had a history of using illegal drugs, including opiates; Plaintiff had a history of violent domestic relationships; and Plaintiff had a history of previous intervention by OCS regarding another child and her parental rights to that child were in jeopardy due to injuries to that child.[61] The social workers had no way to know at that juncture whether the source of the opiates in the baby's system was due only to a prescription, or also the result of illegal drug use. The Court finds on the facts of this case, as they were undisputedly known to Defendants at the time A.F. was seized at the hospital, Defendants had "reasonable cause to believe that the child [was]

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[59] *Id.* at 793.

[60] Plaintiff proceeded to breastfeed A.F. against medical advice, thus continuing to expose A.F. to the opiates in her system. Docket 140-2 at 8 (deposition of Dr. Laura Peterson).

[61] Additionally, A.F. required monitoring for signs of withdrawal and would have needed immediate medical care if she started to show signs. Docket 140 at 3. It is reasonable to assume that an experienced OCS social worker would have known this, whether or not she spoke with a doctor.

likely to experience serious bodily harm" in the time that was required to obtain permission from the court.[62] Indeed, it is arguable that Plaintiff's decision to breastfeed, and to thereby continue to pass on the opiates in her system to the infant, qualifies as a risk of bodily harm.

Given that this incident arose prior to *Kirkpatrick*, the Court finds that Defendants are protected by qualified immunity for the initial seizure of the child in the hospital. The Court offers no opinion regarding whether the social workers' seizure of the child would have been reasonable after *Kirkpatrick*. Accordingly, Count 1 is dismissed. Plaintiffs motion for partial summary judgment as to Count 1 is DENIED.

B. Fourteenth Amendment (Familial Association) and Absolute Immunity

Count 2 alleges a violation of Plaintiffs Federal Civil Right to "Familial Association" under the Fourteenth Amendment.[63] Plaintiff alleges that "there existed a clearly established due process right not to be subjected to false accusations on the basis of false evidence that was deliberately fabricated by the government," and "that a reasonable agent in Defendants' situation would know, or should know, that it is unlawful to lie, fabricate evidence, and/or suppress material exculpatory evidence . . . to influence judicial decision making." Defendants argue that "the social workers are entitled to absolute immunity for their decision to initiate a dependency proceeding because Dunkle has failed to establish a factual dispute regard-

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62 *Rogers*, 487 F.3d at 1295.

63 Docket 1 at 16-19.

ing her claim that Dale testified falsely, committed perjury, and fabricated evidence."[64]

> Absolute immunity from private lawsuits covers the official activities of social workers only when they perform quasi-prosecutorial or quasi-judicial functions in juvenile dependency court. . . . The factor that determines whether absolute immunity covers a social worker's activity or "function" under scrutiny is whether it was investigative or administrative, on one hand, or part and parcel of presenting the state's case as a generic advocate on the other. Absolute immunity is available only if the function falls into the latter category.[65]

There is no dispute that social workers "are not entitled to absolute immunity from claims that they fabricated evidence during an investigation or made false statements in a dependency petition affidavit that they signed under penalty of perjury, because such actions aren't similar to discretionary decisions about whether to prosecute."[66] The *Hardwick* court explained that "government perjury and the knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth Amendment's guarantee of Due Process in our courts . . . . There are no circumstances in a dependency proceeding that would per-

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[64] Docket 140 at 16.

[65] *Hardwick v. Cty. of Orange*, 844 F.3d 1112, 1115 (9th Cir. 2017) (citing *Miller v. Gammie*, 335 F.3d 889, 896-98 (9th Cir. 2003) (en banc)).

[66] *Beltran v Santa Clara Cty.*, 514 F.3d 906, 908 (9th Cir. 2008).

mit government officials to bear false witness against a parent."[67] But Defendants distinguish *Hardwick*, noting that in *Hardwick* the plaintiff successfully proved that the social workers had lied, falsified evidence, suppressed exculpatory evidence, and did so with malice. Here, Defendants argue that Dunkle has failed to establish that Dale testified falsely and that, but for that dishonesty, A.F. would not have been taken into protective custody.[68]

Plaintiff alleges fabrication of statements in the Emergency Petition; fabrication of evidence, perjury, and failure to provide exculpatory evidence at the hearing on February 2, 2012; and fabrication of evidence, perjury, and failure to provide exculpatory evidence at the Termination Hearing on September 18, 2012.[69] Plaintiff identifies nine statements made by Dale that are allegedly false.[70] Plaintiff alleges that Dale: (1) said a "report of harm" was made by the hospital, when really it was a "report of concern;" (2) falsely testified that Plaintiff used illegal substances before the birth of A.F.; (3) falsely represented that the positive test for hydrocodone was not the result of taking prescription hydrocodone; (4) falsely testified that Plaintiff did not participate in J.F.'s plan; (5) falsely stated that Plaintiff did not keep in touch with her; (6) falsely stated that Plaintiff had abandoned A.F.; (7) misrepresented the facts surrounding injuries

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[67] 844 F.3d. at 1119.

[68] Docket 140 at 19.

[69] Docket 130 at 10.

[70] *Id.* at 15-16.

sustained by J.F.; and (8) misrepresented to the court that Plaintiff posed a substantial risk to A.F.

The Court notes that Count 2, although pled against multiple Defendants, only alleges wrongdoing by Defendant Dale. Moreover, Defendants have provided evidence explaining or corroborating almost all of the statements that Plaintiff claims were false or misleading, arguing that "no reasonable trier of fact could find that the defendants fabricated evidence" in this case.[71]

Due to the nature of the briefing in this matter, Defendants' explanations for Dale's alleged false statements were contained in a reply brief, which did not give Plaintiff the opportunity to respond. Accordingly, the Court finds that further briefing on this issue is necessary. However, Count 2 is dismissed as to all Defendants other than Dale.

C. State Law Claims

Defendants move for summary judgment as to each of the three state law claims, in part arguing that state immunities apply. Although Plaintiff's complaint contains two federal claims, that does not shield the state claims from the application of Alaska law, including applicable defenses. The Ninth Circuit has held that "in general a defense of official immunity based on state law is appropriate when the underlying cause of action is based on state rather than federal law."[72]

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71 Docket 140 at 7-14.

72 *Kohlrautz v. Oilmen Participation Corp.*, 441 F.3d 827, 833 (9th Cir. 2006).

1. Intentional Infliction of Emotional Distress (Count 3)

Count 3 alleges intentional infliction of emotional distress for the seizure of the child, as well as all events which followed the seizure. Defendants argue Plaintiff has not demonstrated extreme or outrageous conduct, nor has she demonstrated severe emotional distress, and therefore Dunkle has not put forth a *prima facie* case of intentional infliction of emotional distress.[73] The Court notes that having concluded that Defendants had "reasonable cause to believe that the child is likely to experience serious bodily harm," and that seizure of the child without a court order was reasonable in the circumstances at the time, the Court agrees that no reasonable jury could find that the actions of Defendants when they seized the child at the hospital rose to the level of "intentional" infliction of emotional distress. The involvement of OCS in a parent's rights to their child no doubt is stressful. However, the threshold for an intentional infliction of emotional distress claim in Alaska is high. Liability has been found "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."[74] Plaintiff has not alleged anything close to this standard. The recording of the seizure reflects the social workers and state trooper were calm and professional through the entire process. This claim is dismissed.

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[73] Docket 140 at 21.

[74] *Hawks v. State, Dep't of Pub. Safety*, 908 P.2d 1013, 1016 (Alaska 1995) (citations omitted).

2. Abuse of Process (Count 4)

Count 4 alleges abuse of process by all of the social workers by misusing governmental process to question, seize, examine, remove, and detain A.F. to bring A.F. and her family into dependency proceedings, and by testifying falsely during proceedings involving the child A.F.[75]

The tort of abuse of process consists of two elements: (1) an ulterior purpose; and (2) a willful act in the use of the process not proper in the regular conduct of the proceeding.[76] "The mere filing or maintenance of a lawsuit—even for an improper purpose—is not a proper basis for an abuse of process action."[77] "Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required."[78]

Defendants argue that the claim for abuse of process must be dismissed as a matter of law. There is no liability for merely filing a claim and carrying the case to its authorized conclusion.

"[A]n action for abuse of process is intended to prevent parties from using litigation to pursue objectives other than those claimed in the suit, such as using a court's process as a weapon to compel another party to pay a different debt or to take some action or refrain from it. Thus the essence of a cause of action

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[75] Docket 1 at 21-22.

[76] *Meidinger v. Koniag, Inc.*, 31 P.3d 77, 86 (Alaska 2001).

[77] *Id.*

[78] *Id.*

for abuse of process is a perversion of the process to accomplish some improper purpose."[79]

Defendants are correct that filing a claim and carrying it to its conclusion is not an abuse of process. The only viable claim that arguably exists regarding abuse of process concerns the alleged fabrication of evidence, perjury, and failure to provide exculpatory evidence by Dale, as discussed under Count 2, which would arguably be a "perversion of the process." As with Count 2, Count 4 is dismissed as to all Defendants other than Dale, and additional briefing is requested.

3. Negligence (Count 5)

Plaintiff argues that the social worker defendants assumed a duty of due care when they voluntarily undertook to investigate the circumstances of A.F.'s birth, and that they did so negligently and without exercising reasonable care by failing to "listen to the advice of medical professionals and other social workers who told them there was no emergency and there was no drug problem."[80] Defendants argue that the social workers who removed A.F. owed no duty of care to Plaintiff, and that the negligence claim must be dismissed as a matter of law. Alternatively, Defendants argue that they are entitled to discretionary function immunity under Alaska Stat. § 09.50.250 for their investigation decisions, citing *Smith v. Stafford*, 189 P.3d 1065, 1072 (Alaska 2008). The Court agrees that Defendants are entitled to discretionary function immunity under Alaska Stat. § 09.50.250. Additionally,

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79 *Weber v. State*, 166 P.3d 899, 903 (Alaska 2007) (citation omitted).

80 Docket 1 at 23.

having concluded that Defendants had legitimate cause to seize A.F. at the hospital, this claim is moot. This claim is dismissed.

IV. Conclusion

In light of the foregoing, the Court holds as follows:

1. Defendants' Motion for Summary Judgment at Docket 60 is GRANTED IN PART;
2. Plaintiff's Motion for Partial Summary Judgment at Docket 69 is DENIED;
3. Counts 1, 3, and 5 are DISMISSED WITH PREJUDICE;
4. Count 2 and Count 4 are DISMISSED WITH PREJUDICE as to Defendants Morrison, Sheridan, and Does 1 and 3 through 20;
5. Plaintiff shall file a Sur-Reply to Docket 140, not to exceed 15 pages, responding to Defendant Dale's explanations for the allegedly false testimony, as discussed at Docket 140 pages 7-14 and 17-20, and explaining how Plaintiff supports her allegations that Dale fabricated evidence against her. The Sur-Reply shall be filed on or before May 8, 2017. The Court will address what remains of Count 2 and Count 4 in a subsequent order.

IT IS SO ORDERED this 21st day of April, 2017, at Anchorage, Alaska.

/s/ Ralph R. Beistline
Senior United States District Judge

MEMORANDUM* OPINION OF THE NINTH CIRCUIT (AUGUST 15, 2016)

UNITED STATES COURT OF APPEALS,
NINTH CIRCUIT

JANETTE DUNKLE,

Plaintiff-Appellant,

v.

JENNIFER DALE, in Her Individual Capacity; ET AL.,

Defendants-Appellees.

No. 14-36039

Appeal from the United States District Court for the District of Alaska, Ralph R. Beistline, District Judge, Presiding, D.C. No. 3:14-cv-00005-RRB

Before: FISHER, PAEZ, and HURWITZ, Circuit Judges.

Janette Dunkle appeals the district court's dismissal of her complaint based on the preclusive effect of previous litigation in Alaska child in need of aid ("CINA") proceedings. Reviewing de novo, *Holder v.*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Holder, 305 F.3d 854, 863 (9th Cir. 2002), we reverse and remand.

1. "[F]ederal courts generally give state court judgments the same issue preclusive effect that they would be given by the rendering court." *Id.* at 866. Under Alaska law, issue preclusion bars relitigation when four requirements are met:

> (1) the party against whom the preclusion is employed was a party to or in privity with a party to the first action; (2) the issue precluded from relitigation is identical to the issue decided in the first action; (3) the issue was resolved in the first action by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.

Powercorp Alaska, LLC v. Alaska Energy Auth., 290 P.3d 1173, 1182 (Alaska 2012) (quoting *State, Dep't of Health & Soc. Servs., Office of Children's Servs. v. Doherty*, 167 P.3d 64, 71 (Alaska 2007)). Here, the defendants failed to carry their burden of establishing the second and third requirements. *See Smith v. Stafford*, 189 P.3d 1065, 1075 (Alaska 2008) (stating that the party asserting preclusion bears the burden of pleading and proof).

2. Dunkle argues that the defendants violated her constitutional right to familial association because no exigent circumstances justified removing A.F. without prior court authorization. *See Mabe v. San Bernardino County*, 237 F.3d 1101, 1106-10 (9th Cir. 2001). That claim is not identical to any issue adjudicated in CINA proceedings. *See Powercorp Alaska, LLC*, 290 P.3d at 1182; *Smith*, 189 P.3d at 1075-76.

Alaska law permits social workers from the Department of Health and Social Services to take emergency custody of a child if they determine "that immediate removal from the child's surroundings is necessary to protect the child's life or that immediate medical attention is necessary," Alaska Stat. § 47.10.142(a)(2), but it does not require the state courts adjudicating CINA cases to make such a finding, *see generally id.* § 47. 10.142.

Nor was this issue actually litigated in the underlying CINA case here. During the CINA proceedings, Dunkle never challenged the initial removal of A.F. *See In re Adoption of A.F.M.*, 15 P.3d 258, 268 (Alaska 2001) (requiring that an issue be "properly raised" by the parties and "submitted for determination" to be entitled to preclusive effect) (quoting *Bignell v. Wise Mech. Contractors*, 720 P.2d 490, 494 (Alaska 1986)). The CINA court found that Dunkle's drug abuse created a "substantial risk of harm" to A.F., and that placement with Dunkle would expose A.F. to "further risk of harm" and be "contrary to her welfare." But the court did not purport to determine whether a risk of <u>imminent</u> harm justified the initial, warrantless removal.

3. Similarly, issue preclusion does not bar Dunkle's claim that social worker Jennifer Dale fabricated four statements in her emergency petition to have A.F. declared a CINA. Although the court implicitly credited Dale's testimony in finding probable cause and subsequently adjudicating A.F. to be a CINA, the court was never asked to resolve and did not determine whether any of these four statements was fabricated. *See In re Adoption of A.F.M.*, 15 P.3d at 268. Moreover, the issues in the two proceedings are not identical for

preclusion purposes simply because Dale's testimony was credited in the CINA proceedings. *See Smith*, 189 P.3d at 1075-76; *see also Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1108 n.10 (9th Cir. 2010) ("Even if the state court or the administrative agency addressed the truthfulness of [the social worker's] reports, neither decided whether [she] deliberately fabricated evidence.").

4. Because Dunkle's claims are not barred by issue preclusion, the district court erred in dismissing the complaint on that basis. We therefore reverse and remand for further proceedings consistent with this disposition.

REVERSED AND REMANDED.

ORDER OF THE U.S. DISTRICT COURT OF ALASKA GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM (NOVEMBER 10, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

Before: Ralph R. BEISTLINE, United States District Judge

I. Introduction

Plaintiff filed a complaint under 42 U.S.C. § 1983 based on allegations that social workers and state troopers ("Defendants") violated her right to be free from unreasonable searches and seizures after social

worker Jennifer Dale assumed emergency custody of Plaintiff's newborn infant A.F. on January 20, 2012. Plaintiff has also asserted loss of familial association, warantless [sic] seizure, false testimony, fabricated evidence, intentional infliction of emotional distress. abuse of process, and negligence as a result of the emergency removal of Plaintiff's child. Plaintiff primarily accuses social worker Jennifer Dale as the person who "seized" the child and describes the other defendants as "alter egos" who are "vicariously liable" and who "agreed upon, ratified, and/or conspired together" in the removal of the child A.F. Defendants have filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) at Docket 25. Because Defendants have also sought dismissal based on preclusion, the Court characterizes the motion under Federal Rule of Civil Procedure 12(b)(6) as well. Plaintiff responds at Docket 34 with Defendants replying at Docket 43. Plaintiff has also moved for oral argument at Docket 44.

II. Background

Plaintiff gave birth to a baby girl, A.F., two weeks premature, on January 17, 2012[1] An emergency Caesarean section, or C-section, procedure was used to deliver the baby after it was determined that there was insufficient amniotic fluid to support the baby.[2] A.F. weighed only 4 pounds 10 ounces at birth and tested positive for opiates in her system.[3] Shortly thereafter, the hospital social worker reported the

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[1] Docket 1 at 5.

[2] *Id.*

[3] Docket 26, Exhibit 3.

birth and positive drug screen of A.F. to the Office of Children's Services ("OCS").[4] Plaintiff argues that the report to OCS was due to an unspecified state law requirement due to Plaintiff's history with OCS.[5]

Plaintiff already had a history with OCS. OCS had taken custody of her older child, J.F., in 2009 when the child was 2 years of age.[6] Because of Plaintiff's extensive history of substance abuse and violent domestic relationships, social workers with OCS had previously created a case plan to attempt to reunite Plaintiff with J.F.[7] These efforts were reportedly unsuccessful as proceedings to terminate parental rights to J.F. had commenced at the time of A.F.'s birth. Plaintiff's parental rights and responsibilities as to J.F. were ultimately terminated by the Alaska Superior Court on March 27, 2012.[8]

In response to the report from the hospital, Defendants, under the direction of Dale, assumed emergency custody of A.F. on January 20, 2012, pursuant to Alaska Statute § 47.10.142(a)(3), and filed a petition with the state court alleging A.F. was a "child in need of aid" ("CINA").[9] Defendants have asserted that the totality of the circumstance—including Plaintiff and A.F. testing positive for opiates, Plaintiff's untreated substance abuse, violent relationships, and failure to

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[4] Docket 1 at 8-9.

[5] *Id.* at 5.

[6] Docket 26, Exhibit 3 at 5.

[7] *Id.* at 11.

[8] Docket 26, Exhibit 5.

[9] Docket 1 at 5-7; Docket 26, Exhibit 3.

comply with her case plan with J.F.—placed A.F. at substantial risk for abuse and neglect.[10] In accordance with Alaska Statute § 47.10.142(d), a temporary custody hearing was held on January 23, 2012, to evaluate the temporary custody by OCS.[11] The court found that remaining in Plaintiff's custody put A.F. at further risk of harm and A.F. was to remain in the custody of OCS until the hearing on February 2, 2012.[12]

At the February 2, 2012, hearing, Plaintiff challenged the basis and probable cause for removal of A.F. from her custody. During the hearing Defendant Dale testified and was cross-examined by Plaintiff's counsel and the court reviewed the evidence supporting the removal of A.F. from Plaintiff's custody. The court found that there was "probable cause" to believe that A.F. was a CINA and found that continued placement with Plaintiff was contrary to the child's welfare.[13] The court committed A.F. to the temporary custody of OCS pending the adjudication phase of proceedings. The court issued an order of adjudication on April 23, 2012, that, based on a preponderance of evidence, A.F. continued to be a CINA and that it was contrary to the welfare of A.F. to return to Plaintiff's custody.[14] The court held a hearing regarding the parental rights and responsibilities of Plaintiff for A.F. and ultimately

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[10] Docket 26 at 6.

[11] Docket 26, Exhibit 2.

[12] *Id.* at 3.

[13] Docket 26, Exhibit 3.

[14] Docket 26, Exhibit 6.

granted OCS's petition to terminate parental rights on October 22, 2012.[15]

Plaintiff appealed the court's decision to the Alaska Supreme Court.[16] The Alaska Supreme Court supported all findings and affirmed the state court's order terminating parental rights on April 2, 2014.[17]

III. Standard of Review

A FRCP 12(b)(1)

A complaint must be dismissed if the court lacks subject matter jurisdiction to adjudicate the claims persuant [sic] to Federal Rule of Civil Procedure 12(b)(1). The burden of establishing subject matter jurisdiction rests upon the party asserting jurisdiction.[18] Accordingly, the Court will presume lack of subject matter jurisdiction until the plaintiff proves otherwise in response to the motion to dismiss.[19]

B FRCP 12(b)(6)

A motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure may be based on either the absence of sufficient facts alleged under such a theory or the lack of a cognizable legal theory.[20]

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15 Docket 26, Exhibit 8.

16 2014 WL 1357038 (Alaska).

17 *Id.*

18 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994).

19 *Id.*

20 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

All material allegations in the complaint are treated as true and construed in the light most favorable to the plaintiff. In order to survive such a motion, the complaint need not provide detailed factual allegations, but must state a claim for relief, "plausible on its face," and not simply a formulaic recitation of the elements of a cause of action.[21] The court is not, however, required to accept as true legal conclusions or "threadbare recitals of the elements of a cause of action" supported by mere conclusory statements.[22] The court may also take into consideration issue and claim preclusion in assessing whether a complaint states a claim.[23] Where the court finds that dismissal is warranted, the court should grant the plaintiff leave to amend unless amendment would be futile.[24]

IV. Discussion

Defendants have argued that this Court should dismiss this matter on three bases. First, that the *Rooker-Feldman* doctrine specifies that this Court lacks subject matter jurisdiction in this matter because

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[21] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

[22] *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949-50 (2009) (internal citations omitted).

[23] *See Thompson v. County of Franklin*, 15 F.3d 245, 253 (2d Cir. 2004); *Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008); *Day v. Moscow*, 955 F.2d 807, 811 (2d Cir. 1992) (res judicata may be upheld on a Rule 12(b)(6) motion when relevant facts are shown by court records); *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984).

[24] *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (noting that plaintiff's ability to successfully state a claim with another opportunity must have a reasonable chance).

it requires a review of the state courts findings and judgments. Second, Defendants assert that the doctrine of res judicata precludes this Court from hearing this matter because the claims at issue have already been adjudicated or should have been raised in the prior state court proceedings. Third, this matter is precluded under of the doctrine of collateral estoppel because the issues raised are identical to those already litigated at the state level. This Court addresses each of the bases raised by Defendants individually below.

A. *Rooker-Feldman* Doctrine

Defendants have asserted that this Court lacks subject matter jurisdiction due to the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine arises from a pair of cases where, following suit in state court, the losing party filed suit in federal district court, complaining of injury due to the state court's judgment and seeking review of that judgment by the district court.[25] The Supreme Court has held that the *Rooker-Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[26] In other words, "[t]he *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a

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[25] *See generally Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362, *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206.

[26] *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 1521-22, 161 L.Ed.2d 454 (2005).

grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to [the Supreme] Court."[27]

Plaintiff has asserted that this matter is only related to illegal acts committed by Defendants rather than any legal wrong with the state court's decision and that monetary damages are the only relief sought. While this Court acknowledges that the present matter challenges parts of the state court decision, the *Rooker-Feldman* bar "applies only when the federal plaintiff both asserts as her injury legal error or errors by the state court and seeks as her remedy relief from the state court judgment."[28] Thus, because Plaintiff's claims do not constitute a forbidden de facto appeal of the state court decision, *Rooker-Feldman* does not bar this action. As Plaintiff has asserted a claim for violation of her constitutional rights under 42 U.S.C. § 1983, this Court finds that there is subject matter jurisdiction in this matter.

B. Res Judicata

Defendants argue that the state court decision is still dispositive for its preclusive effect. Res judicata, or claim preclusion, bars a suit "when 'a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or

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[27] *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 644 n.3, 122 S.Ct. 1753, 1759, 152 L.Ed.2d 871 (2002).

[28] *Vacation Vill., Inc. v. Clark Cnty., Nev*, 497 F.3d 902, 911 (9th Cir. 2007) *quoting Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

could have been raised in that action.'"[29] To determine whether a state court judgment would bar an action in federal court, a federal court must apply the res judicata law of the state in which the judgment was entered.[30] In Alaska, "[t]he doctrine of res judicata 'provides that a final judgment in a prior action bars a subsequent action if the prior judgment was (1) a final judgment on the merits, (2) from a court of competent jurisdiction, (3) in a dispute between the same parties (or their privies) about the same cause of action.'"[31]

Res judicata does not apply in the present suit because Defendants cannot establish that they were, or in privity with, parties in the prior action. The Alaska Supreme Court has spoken clearly on the matter of privity for government workers sued in their personal capacity, specifically social workers. In *State of Alaska, Department of Health & Social Services, Office of Children's Services v. Doherty*, the Alaska Supreme Court found that a social worker, sued personally following significant involvement and testimony in a CINA hearing, "cannot be understood to have been in privity with the state."[32] Because Defendants were neither party to nor in privity with the parties to the

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[29] *ProShipLine Inc. v. Aspen Infrastructures Ltd.*, 609 F.3d 960, 968 (9th Cir. 2010) *quoting Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980).

[30] *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892, 79 L.Ed.2d 56 (1984).

[31] *Smith v. CSK Auto, Inc.*, 132 P.3d 818, 820 (Alaska 2006) *quoting Plumber v. Univ. of Alaska Anchorage*, 936 P.2d 163, 166 (Alaska 1997).

[32] 167 P.3d 64 (Alaska 2007).

prior proceedings, res judicata does not preclude Plaintiff's claims.

C. Collateral Estoppel

Defendants also argue that the issues underlying this matter are precluded by the prior state court judgment based on collateral estoppel. The principle of collateral estoppel provides that "once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case."[33] The Supreme Court has held that in the context of collateral estoppel, or issue preclusion, that federal courts are required by 28 U.S.C. § 1738 "to give preclusive effect to state-court judgments whenever the courts of the State from which the judgment emerged would do so."[34]

The application of collateral estoppel in Alaska has four elements: (1) the party against whom the preclusion is employed was a party to or in privity with a party to the first action; (2) the issue precluded from relitigation is identical to the issue decided in the first action; (3) the issue was resolved in the first action by a final judgment on the merits; and (4) the determination of the issue was essential to the final judgment.[35]

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[33] *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414-15, 66 L.Ed.2d 308 (1980).

[34] *Id.* at 96.

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

1. Assertion Against Party to the First Action

The first requirement of collateral estoppel is met with regard to Plaintiff. Unlike res judicata, which requires the participation or privity from all parties in the subsequent suit, collateral estoppel only requires participation of the party against whom the preclusion is being asserted. In the present case, Defendants have asserted preclusion against Plaintiff and it is undisputed that Plaintiff was a party to the prior proceedings in the state court.

2. Identity of Issues Between Actions

The issues on their face are quite similar between this suit and Plaintiff's actions before the state court. The issues raised by Plaintiff in the present suit all stem from Defendants taking emergency custody of A.F. on January 20, 2012, and the continued temporary custody of A.F. by OCS following the state court hearing on February 2, 2012.[36] Plaintiff specifically challenged the probable cause for temporary custody in that proceeding.[37] Nevertheless, Plaintiff argues that there is not an "identity-of-issues" between these actions. Particularly, Plaintiff asserts that the exigency warranting A.F.'s emergency removal by OCS and Defendants' alleged false statements and fabricated evidence were not issues in the preceding action.

In applying the preclusion law of this state, this Court finds the specific factors enunciated by the Alaska Supreme Court for evaluating identity of issues to be controlling. In *Powercorp Alaska, LLC v.*

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[36] Docket 26, 3 at 23-24.

[37] *Id.* at 3.

Alaska Energy Authority, the Alaska Supreme Court recently outline four factors to evaluate the identity of issues":

> Is there a substantial overlap between the evidence or argument to be advanced in the second proceeding and that advanced in the first? Does the new evidence or argument involve application of the same rule of law as that involved in the prior proceeding? Could pretrial preparation and discovery relating to the matter presented in the first action reasonably be expected to have embraced the matter sought to be presented in the second? How closely related are the claims involved in the two proceedings?[38]

First, this Court finds there is a substantial overlap of evidence and argument advanced between the two proceedings. Not only does Alaska law require a judge to immediately review the necessity of the emergency removal and temporary custody, but the state court in this case did review the exigency of this matter on January 23, 2012, and specifically found that continued custody by Plaintiff "would have placed [A.F.] at further risk of harm."[39] Plaintiff was also specifically advised that the court's findings, including approval of emergency removal and reliance on Defendants' statements, could be contested in the proceedings on February 2, 2012.[40] Plaintiff did dispute the

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38 290 P.3d 1173, 1182 (Alaska 2012), as amended on reh'g (Jan. 7, 2013) adopting Restatement (Second) of Judgments § 27 (1982).

39 Alaska Stat. Ann. § 47.10.142(e); Docket 26, Exhibit 2 at 3.

40 *Id.*

state court's finding of probable cause and continued to argue that there was no evidentiary basis for A.F. to be deemed a CINA. Plaintiff has not advanced any further issues that were not present before the state court in the first action as to the emergency removal, conduct of the Defendants, false evidence at hearing, or A.F.'s placement in temporary custody.

Additionally, this Court finds that the previous pretrial preparations would reasonably have been expected to encompass the issue of exigency for emergency custody, Defendants' actions in removing A.F., and the validity of the evidence provided by Defendants. Plaintiff disputed the state court's determination that A.F. was a CINA and contested temporary custody and the eventual termination of her parental rights. Any evidence disputing the exigency of A.F.'s emergency removal would reasonably have been expected to have been raised at any of the state court proceedings. The same holds true for the matter of evidence that was allegedly falsified, patently untrue, or suppressed all of which would reasonably have been expected to be raised in the prior state court proceedings. The Ninth Circuit has recognized that the effect of collateral estoppel dictates that "once an issue is raised and determined, it is the entire issue that is precluded, not just the particular arguments raised in support of it in the first case."[41]

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41 *Kamilche Co. v. United States*, 53 F.3d 1059, 1063 (9th Cir. 1995) (emphasis in original) quoting *Yamaha Corp. of America v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992)), opinion amended on other grounds, *Kamilche v. United States*, 75 F.3d 1391 (9th Cir. 1996).

Finally, this Court finds that the claims involved in the two proceedings are closely related. Although the present case raises claims for violations to Plaintiff's constitutional rights as opposed to claims regarding A.F. being a CINA, they stem from identical facts under the prior proceeding and issues in both suits are similar in scope.[42] The claims between the two actions are also undeniably intertwined. Plaintiff cannot challenge the warrantless removal of A.F. without challenging whether the state court correctly found probable cause that A.F. was a CINA and was at risk of further harm if sin Plaintiff's custody. Similarly, Plaintiff also cannot challenge the evidence and testimony provided by Defendants without disputing the state court's decision which relied upon that evidence and testimony. While the claims are not identical, they nevertheless are very closely related.

After consideration of these factors, this Court finds that there is identity of issues between the prior proceedings and the issues raised by Plaintiff in the present action.

3. Final Judgment on the Merits

Finally, the issues in the first action must have been resolved by a final judgment on the merits. The decision by the state court on January 23, 2012, was upheld in the February 2, 2012, proceedings and again in the termination proceedings on April 23, 2013. The state court judgment was affirmed by the Alaska Supreme Court.[43] The finality of the judgment on the

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[42] *Powercorp*, 290 P.3d at 1183.

[43] *See* 2014 WL 1357038 (Alaska).

merits at the state level has not been disputed by Plaintiff.

4. Issue Essential to the Final Judgment

The basis for Defendants' emergency removal of A.F. and the truthfulness of Defendants statements were essential to the state court's decision. Citing cognizable risk of further harm to A.F., the state court's decision acknowledged the existence of the exigent circumstances in finding probable cause for temporary custody of A.F. Additionally, the testimony and evidence offered by Defendants can be characterized as integral to the state court's decision as it was the exclusive source of testimonial evidence at the proceeding on February 2, 2012. Plaintiff's due process rights were not violated.

Insofar as the Alaska state requirements for collateral estoppel are satisfied, Plaintiff is precluded from relitigating these issues in the present suit.

V. Motion to Dismiss

The Defendants' motion to dismiss for subject matter jurisdiction fails because the *Rooker-Feldman* doctrine does not apply in the present case and Plaintiff's have asserted a claim under a federal cause of action which grants this court subject matter jurisdiction. However, the prior proceedings at the state court preclude Plaintiff from challenging Defendants' conduct, as discussed above, under collateral estoppel. Without this evidence, Plaintiff has no basis upon which to proceed in this matter. Even construing the complaint in the light most favorable to Plaintiff, preclusion of these critical issues eliminates any cognizable legal theory, and requires that this matter be

dismissed pursuant to 12(b)(6) of the Federal Rules of Civil Procedure.[44] Additionally, dismissal of a complaint without leave to amend is proper where it is clear that the complaint could not be saved by amendment.[45] Because dismissal in this matter is predicated on the preclusive effect of the prior proceedings and an amendment would not change the prior proceeding nor the identical facts between these actions, Plaintiff's complaint is dismissed without leave to amend.

VI Conclusion

In light of the foregoing, the Court GRANTS Defendants' Motion to Dismiss and the matter is dismissed with prejudice. Plaintiff's Motion Requesting Oral Arguments is DENIED as unnecessary.

IT IS SO ORDERED this 10th day of November, 2014.

/s/ Ralph R. Beistline
United States District Judge

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44 *Balistreri*, 901 F.2d at 699.

45 *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004).

ORDER OF THE NINTH CIRCUIT DENYING PETITION FOR REHEARING (AUGUST 17, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANETTE DUNKLE,

Plaintiff-Appellant,

v.

JENNIFER DALE, in Her Individual Capacity; ET AL.,

Defendants-Appellees.

No. 17-35525

D.C. No. 3:14-cv-00005-RRB
District of Alaska, Anchorage

Before: THOMAS, Chief Judge, and CALLAHAN and BEA, Circuit Judges.

The panel has voted to deny the petition for panel rehearing and to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are denied.

DEPOSITION OF KIRSTEN NELSON —RELEVANT EXCERPTS (AUGUST 13, 2014)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, and DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

[August 13, 2014 Transcript, p. 12]

Q. Okay. And how did she get involved in this?

A. She was the patient's nurse on that day.

Q. The patient's nurse.

A. So this would be how we usually do things. Get a referral, I look at the record, I talk with the

nurse. Sometimes talk with the physician if they're there.

Q. And do you recall what the nurse told you?

A. Not in specific detail. Just . . . .

Q. But in general.

A. General, that—that the mother and child were in the room ready for a visit. I already had looked at the records, so I knew we had positive screen.

Q. Okay. When you say positive screen . . . .

A. Oh, I'm sorry. A positive . . . .

Q. That's all right.

A. . . . positive drug screen.

Q. Okay And—okay. And is that due to the Subutex, Subutex?

A. Well, that—she was positive for that as well as opiates.

Q. Okay.

A. But after visiting with her and looking further into the record at that time I had referenced that she had a prescription for Norco from an emergency department visit.

Q. Okay. And do you know what that emergency was for?

A. I believe kidney stones.

Q. Okay. And do you recall which doctor prescribed the opiates or Norco?

A. I don't recall, but I can look. It's in the chart. If you'd like.

Q. Okay.

A. So she was—she was seen in our emergency department and I have a copy of the ER record. The ER provider was Dr. Anne Zink.

Q. Doctor . . . .

A. Anne Zink, Z-i-n-k.

Q. Anne, A-n-z-i-n-k.

A. Yeah. Anne, A-n-n-e, and Zink, Z-i-n-k.

Q. Oh, okay. And he is . . . .

A. She's a emergency department physician.

Q. Oh, emergency department. Okay.

A. Uh-h (affirmative).

Q. Emergency department, okay, physician.

A. This happens to be in this particular record because she referred back to her OB/GYN and this—these are his records that are part of this record.

Q. And—okay. And who was the OB/GYN?

A. Dr. Michael Fitzgerald.

Q. Okay. And—okay. And let's see. So then it says here—okay. So you verified that there was a prescription

[. . .]

A. So could she have had other opiates or not, yes or no? That—I have no way of knowing that. But yes, we have a medication that was an opiate and she was positive for opiates.

Q. And she was prescribed for those opiates.

A. Yes . . . .

Q. Okay.

A. . . . .she was prescribed opiates.

Q. Okay. Okay. It says OCS caseworker for Joshua is Jen Dale. And it says—you say here I asked Janette what her understanding of OCS's plan regarding newborn, she was not sure. And did you have any conversations with Jennifer Dale? To your recollection.

A. No, I did not. I—on this day I spoke with Bobbie Jo, no.

Q. Okay. Then it says here—okay.

A. She was the one who answered.

Q. Okay. And it says—said I spoke with Bobbi Jo Nault.

A. Uh-huh (affirmative).

Q. And can you briefly discuss what that conversation entailed?

A. So I called her and discussed with her that mother and child were here, that it was my understanding that she had a—a child already in OCS custody and I wanted to know what their determination about the baby was.

Q. And what did Bobbi Jo say?

A. And also that we had a positive drug screen, but that we could account for that. That she was going to find out and get back with me.

Q. Okay. When you told Bobbi Jo that—Bobbi Jo's a social worker. Correct?

A. She is.

Q. And do you know what her position is with OCS?

A. No. An intake social worker I presume. I make a lot of referrals to her.

Q. Okay. So when you make referrals from the hospital she's the normal contact person?

A. She's one of a few, yes.

Q. Okay. Okay. And when you spoke with Bobbi Jo did she seem concerned about this?

A. I don't recall.

Q. Okay. Then—but I believe you just said she said that she would get back to you?

A. She did.

Q. And what would she get back to you about?

A. About disposition for the baby. If the baby could be discharged to mother, if OCS was going to visit at the hospital or at home, what the plan was.

Q. Okay. Then it says here I had not heard back from Bobbi Jo by late this afternoon regarding a decision so I left a message to please call as soon as a decision is made.

A. Yes.

Q. And do you recall when you made that telephone call?

A. In the afternoon of this day, but . . . .

Q. Sometime after 5:28 or . . . .

A. No, before. Because at 5:00-5:30 we're—this is already done. I'm documenting what's happened, not what's going to happen.

Q. Okay. Okay. So—okay. So when you wrote this Social Services Note basically at the end of the day you were then waiting on a follow-up call from Bobbi Jo Nault. Right?

A. Right.

Q. Okay.

A. And the baby was not to be—was not going to be discharged in any event on this day, the 19th.

Q. Okay.

A. But we wanted to know prior to discharge what the plan was.

Q. Okay. Thank you.

MR. ROSE: That's A. Okay. That's B. I'm sorry.

(Exhibit B marked for identification)

MS. WIBKER: Oh. Thank you.

MR. ROSE RESUMES:

Q. And Ms. Nelson, have you ever seen this document before?

[. . .]

going to go home with the mom? That was the part that was a little bit of a disconnect for me. I do know—I mean if—if you're—if you're saying—if you're saying that—that one child—that you're terminating on one child and yet having another child go home. So it was a surprise to me that we got one that we were going in one direction and

then it was another direction, but it was actually the first direction that was a little more surprising.

Q. Okay. So your thought was it was somewhat strange that there was a initially going home and then a change of mind. You thought that was somewhat different.

A. That was—right. And that that hadn't been worked out. I mean a pregnancy doesn't happen overnight. That that part hadn't been addressed prior to the delivery of the baby.

Q. Okay. Okay.

A. That we didn't—you know, that the mother didn't seem to know either what the plan was.

Q. Okay. Okay. Let's see. Did Bobbi Jo ever—I know she left—I believe you said you left a message.

A. I talked with her and then when I hadn't heard back about what the decision was I left her a message.

Q. And did she ever call back?

A. She left a message that evening, but I was already gone.

Q. And . . . .

A. Then the next morning on the 20th I picked up my voicemail. There was a message from her that baby could go home.

Q. Okay. And then . . . .

A. Then later that morning

Q. Ms. Dale showed up.

A. Right. And . . . .

Q. Okay.

A. . . . .and Ms. Sheridan, uh-huh (affirmative).

Q. Okay I have one request. On these documents right here, can I get somebody at the hospital—who at the hospital can sign a business records affidavit on those documents?

A. What does that mean exactly?

Q. Somebody who is a custodian of . . . .

A. Oh, the girl who actually copied them today, she can do that. Tracy.

Q. Okay.

A. She's the one who got the subpoena and helped compile things.

Q. All right. So if I send a business records affidavit and her name is Tracy?

A. Tracy. I can get her last name if you'd like. But she's the . . . .

Q. Okay. If I send a business affidavit to her she can . . .

[. . .]

A. Yes.

Q. And how did you learn that?

A. She told me that.

Q. Okay. And it looks like there's a statement in one of the records that says—I'm looking at this Social Services Note.

A. Huh-hum (interrogative).

Q. It's dated 1/19.

A. Yes, uh-huh (affirmative).

Q. And it has the statement Janette reports that she has had one year of clean UAs?

A. Yes, that's what she told me.

Q. That's a self-report?

A. Right, that's her reporting that.

Q. Yeah. You're not writing that as a fact.

A. No . . . .

Q. Okay.

A. I'm saying that she says she's had that . . . .

Q. Okay. And . . . .

A. . . . she reports that.

Q. And your office doesn't do anything to see if there's conflicting collaterals or different information on things like this.

A. No. Our job is to report if we have a concern. We're not the investigatory agency.

Q. Okay.

A. And we don't do—usually if people are on regular UAs they're not getting them done in a hospital. They're getting that done at their provider's.

Q. Okay. So you're just documenting what she tells you.

A. Yes.

Q. And that may or may not be true.

A. Right.

Q. Okay. And then she also told you she was seeing Dr. White?

A. She did.

Q. That she was participating in Providence Breakthrough?

A. She told the Breakthrough part I believe to Meghan.

Q. Okay.

A. That's in Meghan's note.

Q. And she also reported that she was doing regular UAs.

A. She did.

Q. And all of that's her self-report . . . .

A. Yes.

Q. . . . uncorroborated by anybody at the hospital.

A. Yes. Except for the—that she also said she had a prescription for Norco from an ER visit and we did corroborate—corroborate that.

Q. Okay. And when you called Ms. Nault originally . . . .

A. Yes.

Q. . . . what was the reason for that call?

A. To determine what their plan was regarding the infant and what their level of involvement was going to be.

Q. Okay. And why wouldn't the hospital just discharge the baby to the mother without calling OCS?

A. She . . .

MR. ROSE: Objection, speculation. What was the question again?

THE REPORTER: You want me to . . . .

MR. ROSE: Yeah, the question she—that was asked of—the last question.

THE REPORTER: Do you want me to repeat it on here?

MR. ROSE: Yeah. Yeah.

THE REPORTER: Okay. We'll go off record at 1:35 p.m.

(Off record at 1:35 p.m.)

(On record at 1:36 p.m.)

THE REPORTER: On record at 1:36 p.m.

MS. WIBKER RESUMES:

A. Because I felt that that warranted a report of incident. That I would want to know that there was enough information out there that—that that's a decision for—at least to get some feedback from the Office of Children's Services on it.

Q. What was the concern?

A. She already has another child in custody. She has an open OCS case. She has a history of—a pretty extensive social history and an unknown plan in terms of what is going to be the custody arrangement for this baby.

Q. And what do you mean by social history?

A. A history of heroin addiction, although now in treatment, or at that time in—reportedly in treatment. And—and an—and an—an open OCS

case in which they were, as she reported to me, already at the point of termination.

Q. Okay. And is there anything unusual about calling OCS based on the facts you've just given me?

A. No.

Q. Would that be standard . . . .

A. Absolutely.

Q. . . . to call OCS with those kind of facts?

A. Absolutely. Our department makes most of the OCS reports through the hospital and—and that would be a common—that would be one that we would definitely report to Office of Children's Services.

Q. So is it fair to say you weren't willing to just send the baby home with the mother without at least checking with OCS?

A. Yes.

MS. WIBKER: Okay. I don't have any other . . . .

MR. ROSE: I have one follow-up question.

A. Sure.

REDIRECT EXAMINATION

BY MR. ROSE:

Q. Is a report of concern a report of harm?

A. That is—I—I call them reports of concern and I document them as such. I think that there—those are terms that are often used interchangeably. The reason that I use the report of concern is that there's not always a direct—sometimes people might misinterpret a report of harm, are we talking

about physical abuse or sexual abuse or neglect, but there are other mandated reports that—that would be under report of concern. Such as parental substance abuse, parental domestic violence, things of that nature. And so I—I think those are—terms are used interchangeably. I happen to use report of concern. But—and the—and—and obviously those types of situations, parental substance abuse, domestic violence, have long—certainly the ability to have long—term impact on a child and—in terms of harm, but not maybe that immediate harm that people think of in terms of physical abuse or sexual abuse. But . . . .

Q. So . . . .

A. . . . certainly very concerning.

Q. . . . is it fair to say while the baby was at the hospital there was no immediate harm?

A. Do you mean immediate physical harm?

Q. Immediate . . .

A. I mean . . .

Q. . . . immediate physical harm to the child.

A. I . . . .

Q. While being in the hospital.

A. Well, being in the hospital with the staff around I would hope no baby's in immediate harm in a hospital setting.

Q. So I guess

A. But . . . .

Q. . . . so I guess what you're saying is while the baby is in the hospital . . . .

A. Huh-hum (interrogative).

Q. . . . there is no immediate threat or threat of harm.

A. This mother's . . .

Q. Or possible harm.

A. This mother's interactions with her baby during my observation were positive interactions, but still that I felt that there was certainly enough for a report of concern.

Q. Understand. But while the baby was in the hospital you did not see any impending or imminent harm to the baby.

A. Yes, that's correct.

Q. Okay.

MR. ROSE: No further questions.

MS. WIBKER: I don't have any other.

A. Okay. Thank you.

THE REPORTER: All right. Ms. Nelson, before we go off record, it is your right to read and sign our deposition if it is transcribed. Would you like to exercise that right?

A. Yes.

THE REPORTER: Okay. Off record at 1:40 p.m.

(Deposition adjourned at 1:40 p.m.)

DECLARATION OF DEBORAH BURLINSKI IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (FEBRUARY 19, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, and DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

I, Deborah Burlinski, am over the age of 18 and not a party to the present action. The following facts to which I hereby declare are of my own personal knowledge and if called upon to testify to the truth and veracity thereof, I would and could competently do so.

I am an attorney duly admitted to practice before all the courts in the State of Alaska. I currently am practicing law in Anchorage and Palmer. During the

period 1993 to 2001 I was a magistrate in Alaska Court System. During that time I issued numerous warrants.

Warrant requests, particularly urgent warrants, are a high priority. Additionally, all the judges can issue warrants so you do not need to wait for a particular judge if he or she is on the bench. Based on my experience the time that is required to obtain-a warrant in the State of Alaska is usually one (1) hour but no more than two (2) hours.

I declare under penalty of perjury that the foregoing-is true and correct. Executed on February 19, 2017.

/s/ Deborah Burlinski
ABA 9011086

DECLARATION OF STEVEN G. MILLER, M.D. IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (FEBRUARY 21, 2017)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JANETTE DUNKLE,

Plaintiff,

v.

JENNIFER DALE in Her Individual Capacity, KAREN MORRISON in Her Individual Capacity, JESSIE LOPEZ in His Individual Capacity, CHRISTINE SHERIDAN in Her Individual Capacity, and DOES 1-20, Inclusive,

Defendants.

Case No. 3:14-cv-00005-RRB

I, Steven G. Miller, M.D., am over the age of 18 and am not a party to the present action. The following facts to which I hereby declare are of my own personal knowledge and if called upon to testify to the truth and veracity thereof, I would and could competently do so.

1. On February 6, 2017 I provided an expert opinion after reviewing the report of Defendants' expert Dr. Baldwin-Johnson. I reviewed all the documents

previously reviewed by Dr. Baldwin-Johnson. This Opinion is attached to my declaration and is incorporated as though fully pled herein. Excerpts of my findings as indicated in the report are as follows:

- On 1/9/12, Ms. Dunkle was admitted to the Mat-Su Regional Medical Center (a Hospital) for kidney stones. In great pain and 8+ months pregnant, she was found to be clinically dehydrated, and treated with IV fluids, IV medications including hydromorphone (Dilaudid), and oral narcotics. She was discharged the next day with a prescription for a hydrocodone preparation (Norco). (This is important because it explains a positive urine drug test she had one week later on admission to the Hospital for delivery by C-section, and also explains a positive urine drug test in the baby who was born healthy. This is addressed later in this report.)
- On 1/17/12, she was again admitted to Mat-Su Regional Medical Center, this time to deliver the baby by C-section. This was done about 2-3 weeks before the expected due date due to low fetal weight by ultrasound. Diagnostic testing on admission revealed that Ms. Dunkle's urine was positive for opiates. Since this was merely a screening test, the specimen was sent to an outside laboratory for confirmatory testing. Some days later, those results were reported quantitatively as follows: hydrocodone, 391; hydromorphone, 1863; buprenorphine, 230; norbuprenorphine, 140.

- Although the infant's urine tested positive for narcotics, the meconium fluid tested negative, as did the umbilical blood. (As noted above, the positive urine test of the baby is consistent with the Mother's authorized and appropriate prescription use of hydrocodone for her kidney stones.) Apgar scores were 9 out of 10 at both 1 minute and 5 minutes; these are clinical scores reflecting the baby's condition and 9 is generally considered excellent. The baby was healthy and did well without complications.
- On the positive side, the records indicate that as of August 2011, Ms. Dunkle was no longer using illicit or unauthorized drugs. A clinical record from her treating doctor, Dr. White, dated 8/31/11 indicates that she last used heroin on 8/27/11. Furthermore, that appears to have been an isolated incident since she had started on a Subutex regimen a few weeks earlier. Assuming this is accurate, then she was not using heroin or unauthorized narcotics from 8/27/11 to 1/17/12, the date of the baby's birth, or for the previous number 143 days.
- Regarding the urine drug test results from the time of Ms. Dunkle's admission to the Hospital on 1/17/12, Dr. Baldwin-Johnson has claimed that they are consistent with recent heroin use. That is <u>not</u> correct. Had Ms. Dunkle been using heroin at that time, one would expect to have found 6-monoacetylmorphine (6-MAM) in the tested specimen. Since 6-MAM was <u>not</u> found, that provides near-definitive evidence that she was <u>not</u> using heroin. (This is in accordance with Federal regulations such as the Federal stan-

dards that govern mandated drug testing for the DOT, FAA, NRC, and other agencies; since 6-MAM is a highly-specific metabolite of heroin that is not found with other opiates such as morphine, its absence essentially rules out recent heroin use.)

- Consequently, the urine specimen obtained from Ms. Dunkle on 1/17/12 provides no credible evidence that she was using an authorized or illicit drugs at that time—quite the opposite, it strongly supports the conclusion that she was not.

2. In summary, in my respectful opinion, from a forensic medical perspective, the immediate seizure of the child at the Hospital by Jennifer Dale and/or her colleagues from the OCS on 1/17/12 cannot be justified on either clinical or medicolegal grounds. Simply put, there was neither an imminent risk nor a direct threat to the child's health, safety, or welfare.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 21, 2017.

/s/ Steven G. Miller, M.D.

REPORT OF STEVEN G. MILLER, M.D. (FEBRUARY 6, 2017)

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Re: Dunkle v. Dale
USDC of Alaska Case No. 3:14-CV-00005

Dear Mr. Rose:

As you requested, I have reviewed the submitted materials in the above-referenced case and I am writing to provide you with a summary of my findings, conclusions, and opinions. These are based only on my review of the submitted materials and, of course, my professional expertise. I have neither interviewed nor met any of the parties.

For orientation, this case centers on a minor child, Ayla Fleetwood, born 1/17/12. As of this writing, Ayla is now five years old. She was delivered by C-section at Mat-Su Regional Medical Center in Palmer, AK. The C-section was performed about 2-3 weeks prior to the estimated due date because of concerns regarding

the baby's condition in utero, specifically low fetal weight by ultrasound. However, she was born entirely healthy with a normal Apgar score of 9 out of 10 (scores between 7 and 10 are generally considered normal). Of particular relevance to this case, Ayla's urine tested positive for opiates but, as discussed later in this report, that was consistent with her Mother's treatment for kidney stones for which she (Ms. Dunkle) had been admitted to the Hospital on 1/9/12 and later discharged with a prescription pain medicine that contains hydrocodone (specifically, Norco, a combination of hydrocodone and acetaminophen).

Her Mother, Janette Dunkle (8/18/85), is the plaintiff in this matter. Now 31, she was 26 at the time of Ayla's birth. As of that time, and. Dunkle had a past history of substance abuse, including narcotic addiction, and other problematic behavior. This will be discussed later in this report. For now, suffice it to say that there is no credible evidence of unauthorized or illicit drug use for several months prior to Ayla's birth. (As discussed shortly, it appears that at least one medical reviewer for the defense has misinterpreted some of the key drug testing results.)

Ayla's father is Joshua Fleetwood. Among other things, he has a history of substance-abuse, incarceration for criminal activity, and other problematic behavior.

At this point, practically speaking, Ms. Dunkle has not seen her daughter since the end of a custody trial that ended in late 2012, more than four years ago. She also has an older child, Joshua, now about 8, who was also removed from her home following a trial, and whom she has not seen in about five years.

Issues to be Discussed

Although I have conducted a broad review of the relevant medical issues, my primary focus has been on the events of January 2012. In that month there were three critical incidents. First, on 1/9/12, Ms. Dunkle was admitted to the Hospital for an acute kidney stone. Discharged the next day, she was sent home on prescription medications including Norco which contains the narcotic hydrocodone. Second, on 1/17/12, Ms. Dunkle was submitted to the Hospital for induced labor to deliver her daughter, Ayla, by C-section. Third, on 1/20/12, representatives from the Office of Child Services (OCS) arrived at the Hospital and took baby Ayla into their custody. Their stated reason for this was that the Mother, Ms. Dunkle, allegedly represented and immediate danger and/or posed an imminent risk to the health and safety of the infant child.

In light of these events, I have been asked to focus on the following medical and forensic medical issues: (1) As of 1/20/12, to what extent, if any, did Ms. Dunkle represent a danger and/or pose a risk to the health or safety of her infant child, Ayla? (2) What was the nature, degree, and severity of any such danger or risk? (3) If, as of that date, Ms. Dunkle did represent a danger or pose a risk to the health or safety of that child, to what extent was that risk imminent, impending, or immediate? (4) As of that date, did any such risk represent a significant risk of substantial harm—in other words, a direct threat to the infant child. (5) Is it possible to provide a valid clinical opinion, with reasonable medical certainty, regarding the timeframe of any direct threat—that is, of any significant risk of substantial harm—to the

child on that date, and, if so, what was that timeframe (expressed in terms of hours, days, weeks, months, years, and so on)? (6) More precisely, on 1/20/12, did Ms. Dunkle represent such an imminent or immediate danger or risk that the child had to be separated from her, removed from her care, or protected within a period of a few hours (e.g., within 6-8 hours)?

Note that there is some overlap with respect to the clinical and forensic answers to the above questions.

In addition, it is understood that it will be necessary to consider the total clinical picture including but not limited to: Ms. Dunkle's history of substance abuse and opiate dependence; noncompliance with medical recommendations; adherence to treatment protocols related to her narcotic dependence; her accuracy, reliability, and completeness as a medical historian; and others. Of particular relevance is the issue of whether, in the days, weeks, or months prior to 1/17/12 (the date of her admission to the Hospital for the C-section), she had used unauthorized or illicit drugs such as heroin or hydromorphone (Dilaudid).

In summary, the key questions are related to the immediate or short-term probability that, as of 1/20/12, Ms. Dunkle might have abused or neglected the infant child.

Brief Summary of Reviewer's Key Credentials

A copy of my curriculum vita (CV) is attached to this report. To briefly highlight, I am board-certified in both internal medicine and emergency medicine. I was previously board certified by the American Board of Independent Medical Examiners, a board examination that focuses on medical impairment and dis-

ability determination. I was previously board certified as a Medical Review Officer (MRO) to review the results of urine, drug, hair and other testing for substances of abuse. In some states, position would not be permitted to officially review the results of urine drug testing without certification as an MRO. Additionally, for many years, much of my practice is focused on behavioral medicine; please see my CV for details but, in brief, I have much experience dealing with individuals who have substance abuse and addiction problems. Finally, please note that I have special expertise in the area of clinical reasoning and medical decision-making, including forensic reasoning and forensic decision-making (again, see CV).

Submitted Documents Reviewed

Several hundred pages of submitted documents were reviewed. To the best of my knowledge, these include the same documents that were provided to Dr. Cathy Baldwin-Johnson, a medical expert for the defense, and a number of others. Specifically, the documents and materials reviewed by me include the following: (1) Hospital records from January 2012 from Mat-Su Regional Medical Center. Among many other things, these included the results of urine drug testing on Ms. Dunkle. The Hospital records also included reports from social service dated 1/18, 1/19, and 1/20/12. (2) Clinical records from various positions and other healthcare providers including those from Dr. Peterson and Dr. White. These included reports from Arctic Skye Family Medicine. (3) The reports of various social service workers. (4) Reports from state troopers regarding the incident and injuries to the older child, Joshua, in 2011. (5) Deposition testimony from Dr. Peterson from 9/17/14. (6) Deposition tes-

timony from Dr. Baldwin-Johnson from 1/9/17 including hundreds of pages of exhibits. (7) The report of a GAL Report dated 9/14/12. (8) Miscellaneous other documents, reports, and materials.

Brief Clinical Summary

Since the relevant clinical history is well-documented in the medical records and related documents (including the contemporaneous notes of various social service workers), only a brief summary of key points will be provided here.

Ms. Dunkle is the mother of two children. The oldest is Joshua, now 8. The youngest is Ayla, now 5. Both children are living together in a foster home. Both children were removed from her custody following respective trials. She has not seen Ayla in over four years; she has not seen Joshua in about five.

A critical incident involving the older child, Joshua, took place in January 2011 at which time the boy was 3 years old. He was physically battered by a male acquaintance of the mother. The boy sustained bruises to the head and elsewhere for which he was taken by Ms. Dunkle to a hospital emergency department and discharged home. Ms. Dunkle has been criticized by some professionals because she allegedly failed to notice the child's injuries in a timely fashion. By her account, however, after the child was picked up at a baby sitter's home by an acquaintance, Mr. Corbin, the boy was bundled up in heavy clothing with a hood over his head on a cold day in January; therefore, his injuries were not readily apparent.

Ms. Dunkle has a long history of substance abuse. This has involved cigarette smoking and drug abuse.

The latter has been particularly noteworthy for opiate abuse but tests have also been positive for marijuana and cocaine. Her narcotic use has involved IV heroin. Indeed, she was still using heroin during the first trimester of her pregnancy with Ayla. She found it difficult to adhere to the initial treatment protocols and her attempts to get clean were characterized by relapses and noncompliance. It also appears that she was not forthcoming about her narcotic use with her obstetrician during her pregnancy with Ayla. From the medical records, it appears that she last used heroin on 8/27/11, about 4+ months prior to giving birth, but had been mostly clean in the months before that. In early August she was placed on a regimen of buprenorphine (Subutex), a drug that, like methadone, is used to wean and maintain patients off narcotics. Therefore, her use on 8/27/11 seems to have been a "slip" that she reported to her treating doctor.

On 1/9/12, Ms. Dunkle was admitted to the Mat-Su Regional Medical Center (a Hospital) for kidney stones. In great pain and 8+ months pregnant, she was found to be clinically dehydrated, and treated with IV fluids, IV medications including hydromorphone (Dilaudid), and oral narcotics. She was discharged the next day with a prescription for a hydrocodone preparation (Norco). (This is important because it explains a positive urine drug test she had one week later on admission to the Hospital for delivery by C-section, and also explains a positive urine drug test in the baby who was born healthy. This is addressed later in this report.)

On 1/17/12, she was again admitted to Mat-Su Regional Medical Center, this time to deliver the baby by C-section. This was done about 2-3 weeks before

the expected due date due to low fetal weight by ultrasound.

Diagnostic testing on admission revealed that Ms. Dunkle's urine was positive for opiates. Since this was merely a screening test, the specimen was sent to an outside laboratory for confirmatory testing. Some days later, those results were reported quantitatively as follows: hydrocodone, 391; hydromorphone, 1863; buprenorphine, 230; norbuprenorphine, 140.

Although the infant's urine tested positive for narcotics, the meconium fluid tested negative, as did the umbilical blood. (As noted above, the positive urine test of the baby is consistent with the Mother's authorized and appropriate prescription use of hydrocodone for her kidney stones.)

Apgar scores were 9 out of 10 at both 1 minute and 5 minutes; these are clinical scores reflecting the baby's condition and 9 is generally considered excellent. The baby was healthy and did well without complications.

From 1/18/12 to 1/20/12 the Hospital course was uneventful. Records document postnatal teaching with appropriate compliance and learning by Ms. Dunkle. She is said to have mastered the required skills, was observed to be attentive, could repeat back information and demonstrate skills, and was observed to be bonding well with the baby.

On 1/19/12, Ms. Dunkle was informed by a Hospital social service worker that she would be discharged the following day with her baby. This is documented in the social service notes on both 1/19/12 and 1/20/12.

The plan was for her own mother to assist with childcare.

However, in the late morning of 1/20/12, agents of the Office of Child Services (OCS) arrived unexpectedly at the Hospital and took custody of the child. Ms. Dunkle was later described as tearful and distraught at the time.

Ayla was subsequently placed in foster care along with her brother, Joshua. As previously noted, she has not seen the children in about 4 and 5 years, respectively.

Clinical and Forensic Opinions

Based on the submitted records, and considering the total clinical picture, I offer the following opinions with reasonable medical certainty. Note that these opinions pertain to the Mother's and the Child's clinical situations in and before January 2012. Since few of the clinical records post-date that time, I am unable to offer any opinions pertaining to their clinical status from February 2012 to date.

1. Ms. Dunkle has a past history of substance abuse including unauthorized and illicit drug use. This involved, at various times, heroin, oral narcotics, cocaine, and marijuana.

2. Ms. Dunkle has a past history of noncompliance with medical recommendations and non-adherence to treatment protocols for her substance abuse, including the narcotic dependence. In fairness, note that she had a rather severe dependence on narcotics and experienced severe withdrawal symptoms when she tried to get clean, so the observation that she had compliance and adherence problems is not meant to

be pejorative. It can be exceedingly difficult for individuals with such problems to overcome their addictions.

3. There are indications that, at times, she was an unreliable historian, especially with respect to her substance-abuse. For instance, it appears that she did not disclose her heroin and other narcotic use, and did not disclose her Subutex use and regimen, to her obstetrician until the ninth month of her pregnancy. It appears that they obstetrician, Dr. Fitzgerald, first learned of this at the time of Ms. Dunkle's admission for the C-section in January 2012.

4. On the positive side, the records indicate that as of August 2011, Ms. Dunkle was no longer using illicit or unauthorized drugs. A clinical record from her treating doctor, Dr. White, dated 8/31/11 indicates that she last used heroin on 8/27/11. Furthermore, that appears to have been an isolated incident since she had started on a Subutex regimen a few weeks earlier. Assuming this is accurate, then she was not using heroin or unauthorized narcotics from 8/27/11 to 1/17/12, the date of the baby's birth, or for the previous number 143 days.

5. Also on the positive side, Hospital records from the days following her delivery indicate that she was very engaged with the post-natal teaching and educational activities. She presented as alert, interested, and participatory. She demonstrated good understanding and was able to repeat back what she had been told or learned. She demonstrated good skills and was observed to have been bonding well with the baby. He's points are copiously documented in the medical records.

6. With respect to any danger or risk Ms. Dunkle posed to baby Ayla on 1/20/12, it is important to understand that any statement of risk is inherently probabilistic—and therefore require some rather sophisticated probabilistic reasoning. Moreover, in a case like this, risk should not be viewed as absolute but, rather, as relative. There are degrees of risk so it is necessary to carefully consider the timeframe of any risk and also the severity of any negative or undesirable outcomes. These points are axiomatic, both in science and in forensic practice.

7. That said, in my opinion, all things considered, as of 1/20/12, Ms. Dunkle represented a very low immediate risk to the baby, by which I mean that there was a very low risk of substantial harm—*i.e.*, that did not represent a direct threat—within a few hours or even a few days (for argument's sake and for simplicity, let's say within 48 hours). This is particularly true since the plan was for Ms. Dunkle to be accompanied and assisted by her own mother, *i.e.*, the maternal grandmother. In my opinion, any risk within that timeframe would have been very minimal, if not trivial. The basis for this opinion, in part, is that Ms. Dunkle had been free of unauthorized or illicit drugs for several months; was compliant with her current medical regimen; had participated fully, demonstrated good understanding, and was fully compliant with the Hospital's prenatal teaching and training; was bonding very well with the baby; and, based on direct observations, had even been cleared by the Hospital's social service worker(s) to go home with her newborn child. Consequently, from a clinical and forensic perspective, any claim that she posed a direct threat or immediate risk, and any claim that

the baby was in imminent danger on that day or even the next, is not supported by either the clinical or the scientific or the forensic evidence. To put this another way, any claim that Ms. Dunkle posed a direct threat and/or that the baby was in imminent danger at that time was speculative—and speculation is not proper under the circumstances.

8. To be sure, if one extends the timeframe to months, weeks, or perhaps even days—but for arguments sake, let's consider the first 48 hours—and if one disregards the apparent fact that the maternal grandmother was expected to be present in the home to assist with childcare and oversee the situation, then I would agree that, over time, all things considered, this Mother posed clinically-significant risk of substantial harm to her young child.

9. In summary, in my respectful opinion, from a forensic medical perspective, the immediate seizure of the child at the Hospital by Jennifer Dale and/or her colleagues from the OCS on 1/17/12 cannot be justified on either clinical or medicolegal grounds. Simply put, there was neither an imminent risk nor a direct threat to the child's health, safety, or welfare.

Dr. Baldwin-Johnson's Deposition and Report

In my opinion, there are a number of serious clinical, scientific, and forensic errors in Dr. Cathy Baldwin-Johnson's deposition and report. I do not mean this as a general criticism—in general, she seems to be very competent—but with respect to certain forensic issues, *e.g.*, interpreting the urine drug testing results and conducting a proper forensic risk

assessment, I strongly disagree with her conclusions. To briefly summarize (highlights only):

1. Regarding the urine drug test results from the time of Ms. Dunkle's admission to the Hospital on 1/17/12, Dr. Baldwin-Johnson has claimed that they are consistent with recent heroin use. That is not correct. Had Ms. Dunkle been using heroin at that time, one would expect to have found 6-monoacetylmorphine (6-MAM) in the tested specimen. Since 6-MAM was not found, that provides near-definitive evidence that she was not using heroin. (This is in accordance with Federal regulations such as the Federal standards that govern mandated drug testing for the DOT, FAA, NRC, and other agencies; since 6-MAM is a highly-specific metabolite of heroin that is not found with other opiates such as morphine, its absence essentially rules out recent heroin use.)

2. Likewise, Dr. Baldwin-Johnson has claimed that the urine test results from that specimen suggest recent use of hydromorphone. The basis for her conclusion in that regard is that the urine drug levels of hydromorphone were higher than those of hydrocodone (the drug for which she had a proper prescription related to her recent attack of kidney stones). For several reasons, that interpretation of the drug testing results is not correct. For one thing, for drugs that are metabolized in the liver, as the body metabolizes a parent drug, in this case hydrocodone, the parent drug is converted to metabolites, in this case hydromorphone (among others). Therefore, over time, less and less of the parent drug (hydrocodone) and more and more of the metabolite (hydromorphone) will appear in the liver. For another thing, to state the previous point differently, it is

absolutely essential to carefully consider the timing of any possible drug or medication use when interpreting the results of urine drug testing. For third thing, there is tremendous variation between people with respect to how they metabolize these drugs. Some people metabolize them quickly and extensively, in which case there will be little of the parent drug and more of the metabolite in the urine. Other people metabolize them slowly and to a limited extent, in which case there will be more of the parent drug and less of the metabolite in the urine. Furthermore, as previously noted, these mechanisms are very time-dependent, and there is wide variation in the rate of metabolism between various individuals (metabolism often varies several fold). For a fifth thing, one must also consider additional factors such as whether the duration and those of any suspected drug use. For example, the person who has taken repeated doses of hydrocodone can accumulate the metabolite hydromorphone in the urine to an extent greater than if the same person had taken a single dose. All of these points are strongly supported by the very same literature that Dr. Baldwin-Johnson cited at the end of her five-page report.

Consequently, the urine specimen obtained from Ms. Dunkle on 1/17/12 provides no credible evidence that she was using an authorized or illicit drugs at that time—quite the opposite, it strongly supports the conclusion that she was not.

3. In her deposition, Dr. Baldwin-Johnson concedes that some of her key opinions, including those pertaining to the risk of harm to the child posed by Ms. Dunkle, is speculative. It is my understanding that, under Federal law (for example, the Americans with

Disabilities Act, or ADA) when assessing risk (specifically whether there is a significant risk of substantial harm), the risk cannot be remote or speculative. In that vein, I disagree with some of her key conclusions including those pertaining to the urine drug testing results and the degree of imminent risk to the infant child as of 1/20/12.

4. To better explain the concept of relative risk, I will end with an analogy taken from Federal law. Let us consider the example of an individual with a known seizure disorder who wishes to obtain a driver's license. In most states, it would be sufficient for such a person to remain seizure free for about 12 months if well-controlled on medications. For example, if a patient with a history of convulsive seizures has been well-controlled for one year on two anti-seizure medications, it would be proper for a physician to give that patient medical clearance to drive a car. In striking contrast, if that individual wanted medical clearance to drive a commercial vehicle that requires certification from the Department of Transportation (a "DOT card"), the person in question would not be eligible for a DOT card because, by federal regulations, it would be necessary to be seizure-free for 10 years on no medications. This strikes some people as paradoxical and illogical, but it is not. Those who hold regular driver's licenses typically drive only about 10,000 to 20,000 miles a year, and their vehicles are generally much smaller (than, say, a truck or bus), hence those vehicles can do much less damage in a crash. Those who drive commercially typically log several times that number of miles a year, and drive bigger, heavier vehicles that pose substantially greater risk. Thus, the government recognizes that

the risk of driving a small vehicle 20,000 miles a year is many times smaller than the risk of driving a large vehicle 100,000 miles a year, and that insight controls the government's regulations on driving. This, I believe, provides a potentially useful analogy for the type of probabilistic reasoning and decision-making that is required in this case. Among other things, it illustrates the critical concepts that risk is relative, that risk is probabilistic, and that one must consider both the total clinical picture and all relevant co-variables in order to perform a proper risk analysis. Furthermore—and this is important—it illustrates the critical point that, especially when lives are at stake, such decisions should be made analytically, based on sound scientific principles, and not just intuitively.

Thank you for asking me to review this interesting and tragic case. Please do not hesitate to call if you have any questions or concerns.

Sincerely,

/s/ Steven G. Miller, M.D.

SGM:vrs

CURRICULUM VITAE
STEVEN G. MILLER, M.D.
(JANUARY 1, 2017)

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Education/Degrees

A.B. (Psychology), Brown University, Providence, RI, 1972.

M.D., Brown University, Providence, RI, 1976.

Post-Graduate Training

Internship (Internal Medicine), Brown University Affiliated Hospitals, The Miriam Hospital, Providence, RI, 1976-1977.

Junior Medical Residency (Internal Medicine), Brown University Affiliated Hospitals, The Miriam Hospital, Providence, RI, 1977-1978.

Senior Medical Residency (Internal Medicine), Harvard University Affiliated Hospitals, Mount Auburn Hospital, Cambridge, MA, 1978-1979.

Certifications

Diplomate, National Board of Medical Examiners.

Diplomate, American Board of Internal Medicine.

Diplomate, American Board of Emergency Medicine.

Provider, Advanced Cardiovascular Life Support.

Instructor, Advanced Cardiovascular Life Support.

Diplomate, American Board of Independent Medical Examiners (1996-2001).

Certified Medical Review Officer (1992-1998). (A certification recognized by government agencies and other entities to review the results of workplace drug testing.)

Academic and Teaching Appointments

Clinical Instructor in Medicine, Harvard Medical School, 1982-2014.

National Faculty for Advanced Cardiac Life Support (ACLS), The American Heart Association, 1984-2004.

New England Regional Faculty for Advanced Cardiac Life Support (ACLS), Massachusetts Affiliate, The American Heart Association, 1998-2006.

New England Regional Faculty for Pediatric Advanced Life Support (PALS), Massachusetts Affiliate, The American Heart Association, 1998-2006.[1]

State Faculty for Advanced Cardiac Life Support (ACLS), Massachusetts Affiliate, The American Heart Association, 1983-1998.

State Faculty for Pediatric Advanced Life Support (PALS), Massachusetts Affiliate, The American Heart Association, 1988-1998.

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[1] In 1998, the American Heart Association state affiliates, including Massachusetts, were combined into a New England Regional Affiliate; thus, state committees were combined and/or converted to regional committees.

Clinical Fellow in Medicine, Harvard Medical School, 1978-1979.

Honors

Distinguished Service Award, American Heart Association, 2004.

Elected to Fellowship, American College of Physicians, 1998.

Elected to Fellowship, American College of Emergency Physicians, 1985.

Elected to Sigma Xi (a scientific research society), Brown University Chapter, 1975.

New York State Regents Scholarship Award, 1968.

Professional Societies

Member, Massachusetts Medical Society (MMS).

Member, Association of Family and Conciliation Courts (AFCC).

Member, American Professional Society on the Abuse of Children (APSAC).

Major Affiliations

Private medical consulting practice specializing in complex case resolution. Areas of special expertise include internal medicine, behavioral medicine,[2] mental health issues, emergency medicine, occupational medicine, and forensic medicine. Among other things, served for many years as the primary medical con-

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[2] Behavioral medicine is an interdisciplinary medical specialty that focuses on the interface between physical medicine and psychiatry or psychology.

sultant for more than 30 municipal police and fire departments for both medical and psychiatric issues. Directed both the Forensic Medicine and the Forensic Psychiatry/Psychology divisions. 1989-present.

The Massachusetts Medical Education Group, LLP (MMEG). A consulting group specializing in research and education related to clinical education, clinical reasoning, clinical problem-solving and clinical decision-making; successor to the Boston Medical Education Group (see Boston Medical Education Group, below). Medical Director, 2013-present.[3]

Harvard Medical School. Clinical Instructor in Medicine. 1982-2014.

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[3] Through the consulting groups (BMEG and MMEG), and also privately, have directed over 500 continuing medical education courses and given over 2000 medical lectures including several at national and international conferences in the U.S. and abroad. Although the subject matter varied widely (including topics in internal medicine, emergency medicine, behavioral medicine, occupational medicine, forensic medicine, psychology, psychiatry, pharmacology, toxicology, and others), the primary educational themes were almost always related to clinical reasoning, clinical problem-solving, and clinical decision-making. Other teaching experience includes supervision of medical students and residents as an attending physician at Cambridge Hospital from 1981 to 2006 (see above).

Recent presentations include a keynote presentation at an international symposium on parental alienation in 2014, co-directing a two-day colloquium in California in 2014 for invited experts on parental alienation, presenting a workshop in New Orleans for the annual meeting of the Association of Family and Conciliation Courts (AFCC) on clinical reasoning and decision-making in 2015, and a workshop on dealing with forensic evidence for a regional conference on child abuse in Texas in 2015.

The Boston Medical Education Group, Inc. (BMEG). A consulting group specializing in research and education related to clinical reasoning, clinical problem-solving and clinical decision-making that has sponsored over 500 continuing medical education courses for physicians and other healthcare professsionals on a wide variety of clinical topics.[4]

Medical Director, 1981-2012.

Cambridge Hospital, Cambridge, MA. Attending Staff, Department of Emergency Medicine and/or Department of Medicine, 1981-2006.

Co-Director, Public Access Defibrillation (PAD) Program, Harvard University, 2003-2006.

Holy Family Hospital, Methuen, MA. Active Staff and Senior Medical Director, Department of Emergency Medicine, 1988-1996; Attending Staff in Occupational Medicine, 1996-2003.

Winchester Hospital, Winchester, MA. Courtesy Staff, Internal Medicine/Occupational Medicine, 1997-2003.

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[4] Major research interests include the relationship between cognitive errors and clinical errors; development of decision tree algorithms and decision rules for clinical problem-solving; practical applications of Bayes theorem (BT) to clinical practice (BT governs conditional probability; that is the probability of one thing given another thing); practical applications of multivalent logic ("fuzzy logic") to clinical practice; formal causation analysis, and clinical reasoning and decisionmaking within the mental health professions. The latter activities include but are not limited to research, writing, teaching and consulting related to child alignment, parental alienation and estrangement, and pathological enmeshment.

Milton Hospital, Milton, MA. Chief, Department of Emergency Medicine, 1986-1991.

Sancta Maria Hospital, Cambridge, MA. Chief, Department of Emergency Medicine, 1984 (through Atlantic Medical Associates).

Atlantic Medical Associates, Inc., Wellesley, MA. A health care management and consulting firm which at one time held contracts to manage seven emergency departments; later a subsidiary of Health Stop Medical Management, Inc. Member, Board of Directors, 1983-1985.

Winthrop Hospital, Winthrop, MA. Attending Staff, Department of Emergency Medicine, 1985-1986 (through Atlantic Medical Associates; part time).

Medical East Community Health Plan, Peabody, MA. Staff Physician and Consultant in Internal Medicine, 1985-1986 (part time).

Tobey Hospital, Wareham, MA. Attending Staff, Emergency Department, 1979-1982.

West Meadow Medical Center, Inc. Westborough, MA. A primary care and urgent care center. Medical Director, 1981-1982.

Waltham Hospital, Waltham, MA. Attending Staff, Emergency Department, 1982-1984.

Rhode Island Medical & Emergency Services, Inc. Pawtucket, RI. A walk-in medical center. Medical Director, 1979-1980.

Major Committee Memberships

Immediate Past Chair and Vice Chair, Massachusetts/Rhode Island Committee on Emergency

Cardiovascular Care (ECC), New England Affiliate, American Heart Association. 2004-2005.

Chairperson, Massachusetts/Rhode Island Committee on Emergency Cardiovascular Care (ECC), New England Affiliate, American Heart Association. 2001-2004.

Member, Operation Stroke Medical Committee, New England Affiliate, American Heart Association. 1999-2002.

Member, Operation Heartbeat Committee, New England Affiliate, American Heart Association. 1999-2002.

Member, Board of Directors, Boston Division, American Heart Association, New England Affiliate, American Heart Association. 1999-2002.

Chairperson, State Committee on Emergency Cardiac Care and Cardiopulmonary Resuscitation (ECC/CPR), Massachusetts Affiliate, The American Heart Association, 1984-1986 (member 1983-1988; 1993-1998).

Member, State Committee on Pediatric Advanced Life Support, c. 1988-1998, American Heart Association (now a subcommittee of the ECC/CPR Committee).

Medical Director, South Suburban EMS Consortium. A consortium which acts as the regulatory body for pre-hospital care in a region south of Boston under the auspices of the Massachusetts Hospital Association, 1989-1990 (Member, 1986-1991).

Member, Regional Emergency Medical Services Advisory Council (REMSAC), Metropolitan Boston Hospital Association. 1986-1991.

Member, Program Council, Massachusetts Affiliate, American Heart Association, 1984-1986.

Member, Educational Subcommittee, Massachusetts Poison Control Center, 1987-1988.

Member, Executive Committee, Milton Hospital, Milton, MA. 1986-1991.

Chairman, Disaster Committee, Milton Hospital, 1986-1991.

Publications

Emergency Cardiac Care Committee and Subcommittees, American Heart Association. Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care: III.

Advanced Cardiac Life Support. JAMA. 1994;268:2199-2241. Contributor (co-author).

Cummins, RO, et al., Editor. Textbook of Advanced Cardiac Life Support. The American Heart Association, 1994. Contributor (co-author).

Billi, JE and Cummins, RO., Editors. Instructors Manual for Advanced Cardiac Life Support. The American Heart Association, 1994. Contributor (co-author).

Caterine MR, Yoerger DM, Spencer KT, Miller SG and Kerber RE. Effect of Electrode Position and Gel-Application Technique on Predicted Transcardiac Current During Transthoracic Defibrillation. Annals of Emergency Medicine. Volume 29, Number 5; May 1997. Pages 588-595.

Emergency Cardiac Care Committee and Subcommittees, American Heart Association. Guidelines

2000 for Cardiopulmonary Resuscitation and Emergency Cardiac Care. Circulation, 2000;102(suppl I). Contributor (co-author).

Cummins, RO and Hazinski, MF, Editors. ACLS Provider Manual. The American Heart Association, 2001. Contributor (co-author).

Cummins, RO and Hazinski, MF, Editors. Advanced Cardiac Life Support: Principals and Practice/ACLS, The Reference Textbook. The American Heart Association, 2002. Contributor (co-author).

Miller, S. Biphasic defibrillation: global guidelines for resuscitation standards. Private Hospital Healthcare Europe (Clinical Supplement). Campden Publishing, London, 2002, pages C43-C45.

MacCuish, D and Miller, SG. Mapping out a game plan for tachycardias. Critical Care Choices 2002. Lippencott Williams & Wilkins, May 2002.

Bernet, William et al. Parental Alienation: DSM-V and ICD-11. The American Journal of Family Therapy, Volume 38, Issue 2 March 2010, pages 76-187. Contributor.

Bernet, William et al. Parental Alienation: DSM-V and ICD-11. Charles C. Thomas. Springfield, IL. 2010. Contributor.

Miller, Steven G. Clinical Reasoning and Decision-Making in Cases of Child Alignment: Diagnostic and Therapeutic Issues. In Baker, A.J.L. and Sauber, S. R. (Editors). In Working with Alienated Children and Families: A Clinical Guidebook. Routledge, 2013.

Baker, A. J. L., Miller, S. G., Bone, J.M. (and 9 contributors). How to Select an Expert in Parental

Alienation. 2016. Presently a "white paper"; anticipate formal publication in 2017.

Licensure

Massachusetts, 1979 (#44406).

New Hampshire, 1995 (#9426-inactive).

Rhode Island, 1977 (#5230-inactive).

LAB RESULT
(DECEMBER 21, 2011)

REDWOOD TOXICOLOGY LABORATORY
3650 Westwind Blvd,
Santa Rosa, CA 95403
Phone 707.577.7959/800.255.2159
Fax 707.577.0365
www.redwoodtoxicology.com

Valley Phlebotomy VPS/ETG
Ms. Rhonda Goerdt
951 East Bogard Road
Suite 102
Wasilla, AK 99654

Account Number: 112938
Accession Number: 111220-10564
Identification: Dunkle Janette Req#: 902940
Ordered by: Valley Phlebotomy VPS/ETG
(907) 376-6435
Collected: 12/16/2011 by Rhonda
Received: 12/20/2011
Reported: 12/21/2011

TEST NAME	RESULT
Alcohol (Ethanol)	None Detected
Amphetamines	None Detected
Barbiturates	None Detected
Benzodiazepines	None Detected
Cocaine (Metabolite Benzoylecgonine)	None Detected

Opiates	None Detected
THC (Marijuana)	None Detected
Phencyclidine (PCP)	None Detected
Methadone	None Detected
Creatinine Specimen is dilute.	18.1 mg/dL
Propoxyphene	None Detected
Oxycodone/Noroxycodone	None Detected
Ethyl Glucuronide (EtG) EIA screen Cutoff = 100 ng/mL	None Detected

The result for this specimen have been tested in accordance to all Redwood Toxicology Laboratory standard operating procedures and have been reviewed by laboratory certifying scientists.

Chief Toxicologist: Wayne Ross, M.C.L.S.
111220-10564 12/22/2011 9:49 AM

Account Number: 112939
Accession Number: 111221-10505
Identification: Dunkle Janette Req#: 902755
Ordered by: Valley Phlebotomy VPS/ETG
(907) 376-6435
Collected: 12/20/2011 by Rhonda
Received: 12/21/2011
Reported: 12/22/2011

TEST NAME	RESULT
Alcohol (Ethanol)	None Detected
Amphetamines	None Detected
Barbiturates	None Detected
Benzodiazepines	None Detected
Cocaine (Metabolite Benzoylecgonine)	None Detected
Opiates	None Detected
THC (Marijuana)	None Detected
Phencyclidine (PCP)	None Detected
Methadone	None Detected
Creatinine	35.4 mg/dL
Propoxyphene	None Detected
Oxycodone/Noroxycodone	None Detected
Ethyl Glucuronide (EtG) EIA screen Cutoff = 100 ng/mL	None Detected

The result for this specimen have been tested in accordance to all Redwood Toxicology Laboratory standard operating procedures and have been reviewed by laboratory certifying scientists.

Chief Toxicologist: Wayne Ross, M.C.L.S.
111221-10505 12/22/2011 9:48 AM

Identification: Dunkle, Janette/OCS
Account #: 112930
Requisition #: 902780
Accession #: 120104-13118
Specimen Type: URINE
Collected by: Steven L
Collected: 12/28/2011
Received: 01/04/2012 3:40 PM
Reported: 01/06/2012 8:14 AM

Client: Valley Phlebotomy VPS/ETG
951 East Bogard Road
Suite 102
Wasilla, AK 99654
Phone: (907) 378-3435
Fax: (907) 376-6408

Tests Ordered

- E68-ALC/AMP/BAR/BZO/COC/ETG/MTD/OPI/OXY/PCP/PPX/THC

Final Result Summary

- None Detected; none of the analyses tested were detected.

DRUG TESTS

Drug	Alcohol (Ethanol)	
Result	**Method**	**Cutoff**
Not Detected	EA	0.04 g/dL
Drug	Amphetamines	
Result	**Method**	**Cutoff**
Not Detected	EIA	1000 ng/mL

Drug	Barbiturates	
Result	**Method**	**Cutoff**
Not Detected	EIA	200 ng/mL
Drug	Benzodiazepines	
Result	**Method**	**Cutoff**
Not Detected	EIA	200 ng/mL
Drug	Cocaine	
Result	**Method**	**Cutoff**
Not Detected	EIA	300 ng/mL
Drug	Ethyl Glucuronide (EtG)	
Result	**Method**	**Cutoff**
Not Detected	EIA	100 ng/mL
Drug	Methadone	
Result	**Method**	**Cutoff**
Not Detected	EIA	150 ng/mL
Drug	Opiates	
Result	**Method**	**Cutoff**
Not Detected	EIA	300 ng/mL
Drug	Oxycodone/Noroxycodone	
Result	**Method**	**Cutoff**
Not Detected	EIA	300 ng/mL
Drug	Phencyclidine (PCP)	
Result	**Method**	**Cutoff**
Not Detected	EIA	26 ng/mL

Drug	Propoxyphene	
Result	**Method**	**Cutoff**
Not Detected	EIA	300 ng/mL
Drug	THC (Marijuana)	
Result	**Method**	**Cutoff**
Not Detected	EIA	60 ng/mL
Drug	THC/Creatinine Ratio	
Result	**Method**	**Cutoff**
NA		

Specimen Validity Tests

Test	Creatinine	
Result	**Method**	**Cutoff**
48.8 mg/dL	Colorimetric	≥20 mg/dL

Comments:

Analytical testing has been performed in accordance to Redwood Toxicology Laboratory standard operating procedures and fixed results have been reviewed by laboratory certifying scientists.

Chief Toxicologist Wayne Ross, M.C.L.S./MT(AAB)

Method Index:

EA: Enzyme Array
EIA: Enzyme-Immunoassay
EUSA: Enzyme-Linked Immunoassay
RIA: Radio-immunoassay
TLC: Thin Layer Chromatography
GC-FID: Gas Chromatography-Flame Ionization Detector

GC/MS: Gas Chromatography/Mass Spectrometry
LC/MS/MS: Liquid Chromatography Tandem Mass Spectrometry

Specimens are disposed of as follows:
Negatives–after 2 days; Positives-after 6 months; Methadone Maintenance-after 2 months

PRO-MED ATTENDING PHYSICIAN SUMMARY REPORT (JANUARY 9, 2012)

MAT-SU REGIONAL MEDICAL CENTER
2500 South Woodworth Loop,
Palmer, AK 99945
(907) 861-6000

Patient: DUNKLE, JANETTE
DOB: 08/18/1985
Patient#: F14588628
MRN#: V0069135
Date in: 01/09/2012

Patient Demographics

Patient Name: DUNKLE, JANETTE
Age: 26 years
Sex: Female
Acct#: F14588628
Payer Type: MEDICAID
Med Reg#: V0069135
ED Provider: ZINK, ANNE
Primary Physician: FITZGERALD, MICHAEL

Triage Information

Chief Complaint: KIDNEY STONES

- Triage Notes:

PT Went OT OB 2 days ago for Flank Pain, DX kidney stone, This am woke at 0400 with increasing Flank Pain from stone. Scheduled for C section Jan 27th

Temp: 98.1 PO
Pulse: 78 regular
Resp: 18 unlabored
BP: 132/045
O2Sat: 99 FeO2; RA
Pain: 8 Lower Back

Chief Complaint/History of Present Illness

AZ 01/09/2012 09:57

DUNKLE, JANETTE is a 26 years old F that presented to the Emergency Department at 09:40 by WALK-IN. The patient was triaged at 09:41 with the following vital signs: T:98.1 PO, P:78 regular; R:18 unlabored; BP:132/045, SPO2:99 Amt:RA, Pain:8 Lower Back. The patient's primary care physician is FITZGERALD, MICHAEL.

Chief Complaint—KIDNEY STONES Exam Time: 09:53. History obtained from patient. History limited by: N/A/. Went in 2 days ago and urine was bloody, was told had a stone, has a history of stones. Scheduled for c-section on Jan 24th. Onset of symptoms was 3 hour(s) ago. Symptoms are present and increased from onset, fells just like last stone

Review of Systems

AZ 01/09/2012 11:05 Constitutional: negative chills, negative malaise, negative fatigue. ENT: Eyes; Cardiovascular: negative chest pain, negative orthopnea, negative edema, negative syncope. Respiratory: negative shortness of breath, negative cough, negative congestion. Gastrointestinal: negative abdominal Pain, negative constipation, positive nausea, negative vomiting, negative diarrhea. Genitourinary: Positive dark urine,

negative dysuria, positive flank pain, negative urinary urgency, negative vaginal irritation/sore, negative vaginal discharge, negative vaginal bleeding, negative urinary hesitancy. All (other) systems have been reviewed and are negative. Pt also states last BM yesterday, hard and has been increasingly constipated.

Past Medical and Surgical History

AZ 01/09/2012 11:05 Past Medical History; positive ADD, positive HEROIN ADDICTION, positive TOURETTES SYNDROME. Reproductive History; LMP: > 3 months ag, Past Medical and Surgical histories reviewed.

Family and Social Histories

AZ 01/09/2012 11:05 Social History: Denies illicit drug use. Denies alcohol use.

Allergies

[AZ] 01/09/2012 11:05 NKDA

Medications

[AZ] 01/09/2012 11:05 NONE

Physical Examination

- [AZ] 01/09/2012 11:06]
- General: WD, well nourished and in NAD.
- HEENT: HEENT WNL, No evidence trauma.
- Chest: No visible external evidence trauma. Non-tender to palpation.
- Respiratory: No respiratory distress. Lungs clear with equal breath sounds bilaterally.

- Cardiovascular: PMI normal RRR S1, S2 normal with no murmurs, clicks, gallops or rubs. All distal pulses 2+ and symmetric.
- Abdomen: gravid and mildly tender in the left flank and left lower quadrant.
- Musculoskeletal/Extremity: Normal joint range of motion; no swelling or deformities. Negative cyanosis, clubbing or edema.
- Skin: tender in the left flank
- Neurologic: Alert and oriented 10 person, place and time. Cranial nerves 2-12 grossly intact. No motor or sensory deficits.
- FHT-checked and normal see nursing notes.

Physician Orders

(1) IV Insertion [AZ] ordered at 01/09/2012 10:00

(1) Normal Saline Botus 1 liter over 1 hour [AZ] ordered at 01/09/2012 10:00

(1) IV Dilaudid 1 mg [AZ] ordered at 01/09/2012 10:00

(1) IV Dilaudid 1 mg [AZ] ordered at 01/09/2012 10:37 [Transcribed AOB]

Procedures

No items documented.

Clinical Impression

AZ 01/09/2012 11:08 Left Ureterolithiasis; Constipation

Disposition

AZ 01/09/2012 11:08 Disposition: Patient discharged to home. Condition: improved. Certified Med Emerg: Patient's condition represents a certified medical emergency. Disposition date/time: 01/09/2012 11:08. Discussed care with patient and family. Explained findings, diagnosis, and need for follow-up care.

Instructions

AZ 01/09/2012 11:09 Patient has received discharge instructions. Discharge plans discussed with patient who verbalized understanding and willingness to comply. Prescription(s) written for: Narco 325 mg/5mg one-two tablets by mouth every 4-6 hours as needed for pain; Quantity: 20 (twenty); Refills 0 (Zero); Zofran 4 mg: 1 (one) by mouth three times daily as needed as nausea; Quantity: 15 (fifteen); Refills: 0 (Zero) Patient agrees to follow up with FITZGERALD MICHAEL instructed to obtain follow up care in two days. Patient agrees to return Emergency Department immediately if symptoms worsen or fail to improve. AZ 01/09/2012 11:09 Patient has received printed discharge instructions. Discharge plans discussed with patient who verbalized understanding and willingness to comply. Prescription (s) written for Narco 325 mg/5mg; by mouth 4-6 hours; quantity: 20 (twenty), Zofran 4 mg; by mouth three times daily; quantity: 15 (fifteen). Patient agrees to follow up with FITZGERALD MICHAEL. Instructed to obtain follow up care in two days. Patients agrees to return to Emergency Department immediately if symptoms worsen or fail to improve.

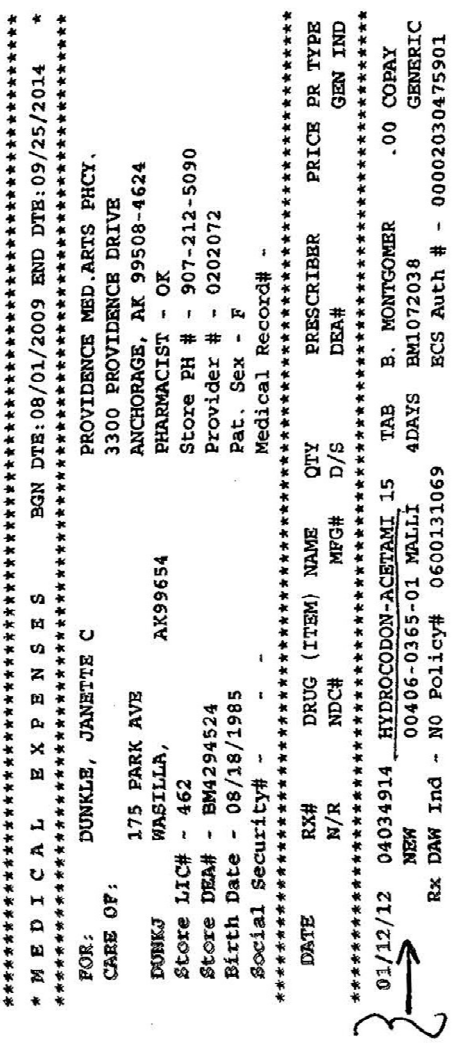
User Added Documentation

No items documented.

Addenda

01/09/2012 14:47 by AZ pt continued to have sig pain, was treated a few more times with pain medication and then for renal u/s which was suggestive of stone, but could not see. Fitzgerald is out of town today, talked to Faucett and informed her of pt.   baby was moving here in the department, felt as though safe to go home.

HYDROCODONE PRESCRIPTION, IMAGE AND TRANSCRIPTION (JANUARY 12, 2012)



****
* M E D I C A L E X P E N S E S BGN DTE:08/01/2009 END DTE:09/25/2014 *
****

FOR: DUNKLE, JANETTE C
CARE OF:
175 PARK AVE
WASILLA, AK99654
DUNKJ
Store LIC# - 462
Store DEA# - BM4294524
Birth Date - 08/18/1985
Social Security# - - -

PROVIDENCE MED.ARTS PHCY.
3300 PROVIDENCE DRIVE
ANCHORAGE, AK 99508-4624
PHARMACIST - OK
Store PH # - 907-212-5090
Provider # - 0202072
Pat. Sex - F
Medical Record# -

DATE	RX# / N/R	DRUG (ITEM) NAME / NDC#	MFG#	QTY / D/S	PRESCRIBER / DEA#	PRICE	PR TYPE / GEN IND
01/12/12	04034914	HYDROCODON-ACETAMI 15		TAB	B. MONTGOMER	.00	COPAY
	NEW	00406-0365-01 MALLI		4DAYS	BM1072038		GENERIC

Rx DAW Ind - NO Policy# 0600131069 ECS Auth # - 000020304759O1

.00 TOTAL

Bryan Anderson MPH

Medical Expenses
Bgn Dte: 08/01/2009
End Dte: 09/25/2014

For: Dunkle, Janette C
Care of:
175 Park Ave
Wasilla, AK 99654

DunkJ
Store Lic#-462
StoreDEA#-BM294524
Birth Date-08/18/1985

Providence Med. Arts Phcy
3300 Providence Drive
Anchorage, AK 99508-4624
Store Ph#-907-212-5090
Provider #-0202072
Pat. Sex-F

Date: 01/12/12
RX#: 04034914
Drug (Item) Name: Hydrocodone-Acetami
Qty: 15 Tab
Prescriber: B. Montgomer
Price PR Type: .00 Copay
.00 Total
N/R: New
NDC #: #: 00406-0365-01 Malli
D/S: 4 days
DEA #: BM1072038
Gen Ind: Generic
Rx DAW Ind- No

Policy# 0600131069
ECS Auth #-00002030475901

BUSINESS RECORDS DECLARATION

1. My Name is Bryan Anders, I am over 18 years of age. I am acting in behalf of the custodian of records or I am otherwise qualified as a result of my position with the business named. I am of sound mind, capable of making thus affidavit and the facts stated in this declaration are within my personal knowledge.

2. Attached to this declaration are records pertaining to all prescriptions and medications prescribed by any physician provider from January 1, 2011 thru August 31, 2014 for Janette Dunkle comprised of 1 pages. Pursuant to Alaska Rules of Evidence Rules 803(6) (Business Records) and Federal Rules of Evidence 803(6) and 902(11) (Certified domestic records or regularly conducted activity), I hereby certify that the records attached to this affidavit:

a) Were made at or near the time of the occurrence of the matters set forth in the records, by, or from information transmitted by, a person with knowledge of those matters;

b) Were kept in the course of a regularly conducted business activity; and

c) Were made by the regularly conducted activity as a regular practice.

d) The records attached are exact duplicates of the original.

I DECLARE under penalty of perjury of the State of Alaska and the United States of America that the foregoing is true and correct.

Executed on September 25, 2014 at Anchorage, Alaska

/s/ Bryan Anders R.Ph
Agent for Custodian of Records

CARRS|SAFEWAY
#1811

595 E. PARKS HWY #300
WASILLA, AK 99687
(907)352-1160

Official Receipt - Please retain for tax or insurance

DUNKLE, JANETTE C (907) 376-0350
175 PARK AVE **08/18/1985**
WASILLA, AK 99654

DR. ZINK, ANN **[NW]**
2600 S. WOODWORTH LOOP
PALMER, AK 99645

NoAF

Rx:4209587 Jan 09, 2012 Safety Cap: Yes
HYDROCO/ACETAM 5-325 TAB MAL) Qty: 20 TAB
Generic for: NORCO 5-325MG TAB WATS

LB/IA

Ref: 00002028400801 NDC: 00406-0365-05
ALASKA MEDICAID **Cash Price:** 19.99
Amount Due: $0.00

Rx *REFILL YOUR PRESCRIPTIONS*
@ CARRSQC.COM

268512
TAKE ONE OR TWO TABLETS BY MOUTH EVERY
FOUR TO SIX HOURS AS NEEDED FOR PAIN

Refills: 0

1-May take with meals if stomach upset occurs.
2-Do not exceed recommended dosage
3-Check w/Dr before drinking alcoholic beverages
4-Use cautiously with other depressant-type drugs
5-May cause drowsiness/dizziness. Drive with caution
6-Check with Dr. before taking any other medicine
7-Report hives/itching/problems in breathing to Dr
8-Promptly report unusual symptoms/effects to Dr

Rx 4209587

Do not flush unused medications or pour down a sink or drain.

Safety Caps: Yes

DUR MSGS

Pat Allergies: NO KNOWN DRUG ALLERGY.

WHEN TAKING THIS MEDICATION
DO NOT DRINK
ALCOHOLIC BEVERAGES

00406-0365-05 **DUNKLE, JANETTE C**

labelkes.ae 03/01/11

Jan 09, 2012 4209587 DUNKLE, JANETTE C [NW]
ALASKA MEDICAID
No Safety Caps Requested: Yes
Consultation: Accepted ____ Declined ____ -WF-
Signature:

HYDROCO/ACETAM 5-325 TAB MAL

Report adverse events
Human Drug Product
800-332-1088

GENERIC NAME: HYDROCODONE (hye-droe-KO-done) and ACETAMINOPHEN (a-seat-a-MIN-oh-fen)

COMMON USES: This medicine is a combination of a narcotic and acetaminophen used to relieve moderate to severe Narcotic pain-relievers work by binding to opioid receptors in the brain and spinal cord, and acetaminophen decreases formation of prostaglandins, therefore reducing pain. This medicine may also be used to treat other conditions as determined by your doctor.

HOW TO USE THIS MEDICINE: Follow the directions for using this medicine provided by your doctor. Take this medi by mouth. THIS MEDICINE MAY BE TAKEN WITH FOOD if it upsets your stomach, although doing so may decrease it effectiveness. Consult your doctor or pharmacist about alternatives for decreasing nausea (such as antihistamines, or down for 1-2 hours with minimal head movement). STORE THIS MEDICINE at room temperature in a tightly-closed container, away from heat, and light. IF YOU MISS A DOSE OF THIS MEDICINE and you are taking it regularly, take it soon as possible. If it is almost time for your next dose, skip the missed dose and go back to your regular dosing sche Do not take 2 doses at once.

CAUTIONS: DO NOT TAKE THIS MEDICINE if you have had an allergic reaction to it or if you are allergic to any ingre in this product. CHECK WITH YOUR DOCTOR OR PHARMACIST BEFORE USING THIS MEDICINE if you have had a se allergic reaction to other narcotic medicines (eg, medicines that contain codeine, morphine, oxycodone). A severe alle reaction includes a severe rash, hives, breathing difficulties, or dizziness. If you have a question about whether you ar allergic to this medicine or to other narcotic medicines, contact your doctor or pharmacist. DO NOT EXCEED THE RECOMMENDED DOSE of this medicine. Do not use this medicine more often or for longer than prescribed without checking with your doctor. Exceeding the recommended dose or taking this medicine for longer than prescribed may b habit-forming. If using this medicine for an extended period of time, DO NOT SUDDENLY STOP taking this medicine without your doctor's approval. When using for an extended period, this medicine may not work as well and may requ different dosing. Talk with your doctor if this medicine stops working well. KEEP ALL DOCTOR AND LABORATORY APPOINTMENTS while you are taking this medicine. Laboratory and/or medical tests may be performed to monitor yo progress or to check for side effects. This medicine may alter certain lab test results. Make sure that all of your doct and laboratory personnel know you are taking this medicine. BEFORE YOU HAVE ANY MEDICAL OR DENTAL TREATMENTS, EMERGENCY CARE, OR SURGERY, tell the doctor or dentist that you are using this medicine. THIS MEDICINE MAY CAUSE drowsiness or dizziness. Using this medicine alone, with other medicines, or with alcohol may lessen your ability to drive or to perform other potentially dangerous tasks. AVOID ALCOHOLIC BEVERAGES while tak this medicine. To minimize dizziness or lightheadedness, get up slowly when rising from a seated or lying position. Thi medicine may cause constipation. To prevent constipation, maintain a diet adequate in fiber, drink plenty of water, an exercise. THIS MEDICINE CONTAINS ACETAMINOPHEN. Do not take additional acetaminophen for pain or fever with checking with your doctor or pharmacist. Ask your pharmacist if you have questions about which medicines contain acetaminophen. If you consume 3 or more alcoholic drinks every day, ask your doctor whether you should take this medicine or other pain relievers/fever reducers. Acetaminophen may cause liver damage. Alcohol use combined with t medicine may increase your risk for liver damage. BEFORE YOU BEGIN TAKING ANY NEW MEDICINE, either prescripti over-the-counter, check with your doctor or pharmacist. This includes other pain relievers, cough-and-cold medicines, allergy medicines. CAUTION IS ADVISED WHEN USING THIS MEDICINE IN THE ELDERLY because they may be more sensitive to the effects of the medicine. FOR WOMEN: IF YOU PLAN ON BECOMING PREGNANT, discuss with your d the benefits and risks of using this medicine during pregnancy. AN INGREDIENT IN THIS MEDICINE IS EXCRETED in br milk. IF YOU ARE OR WILL BE BREAST-FEEDING while you are using this medicine, check with your doctor to discuss risks to your baby.

POSSIBLE SIDE EFFECTS: SIDE EFFECTS that may occur while taking this medicine include nausea, vomiting, constipation, lightheadedness, dizziness, drowsiness, flushing, or vision changes. If they continue or are bothersome, with your doctor. CHECK WITH YOUR DOCTOR AS SOON AS POSSIBLE if you experience anxiety, fear, or other men mood changes. CONTACT YOUR DOCTOR IMMEDIATELY if you experience slow or irregular breathing; slow or irregul heartbeat; a change in the amount of urine produced; change or loss in hearing (especially with high doses for long periods); severe drowsiness or dizziness; dark urine; pale stools; or yellowing of the eyes or skin. AN ALLERGIC REAC to this medicine is unlikely, but seek immediate medical attention if it occurs. Symptoms of an allergic reaction include rash, itching, swelling, severe dizziness, or trouble breathing. If you notice other effects not listed above, contact your doctor, nurse, or pharmacist. This is not a complete list of all side effects that may occur. If you have questions about effects, contact your healthcare provider. Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088.

Dunkle, Janette C
175 Park Ave
Wasilla, AK 99654
(907) 376-0350
08/18/1985

Dr. Zink, Ann
2500 S. Woodworth Loop
Palmer, AK 99645

Rx: 4209587 Jan 09, 2012
Safety Cap: Yes
HYDROCO/ACETAM 5-325 TAB MAL
QTY: 20 Tab
Generic for: NORCO 5-325 mg TAB WATS

Ref: 00002028400901
NDC: 00406-0365-05
Alaska Medicaid
Cash Price: 19.99
Amount Due: $0.00

Take one or two tablets by mouth every four to six hours as needed for pain

Refills: 0

1. May take with meals if stomach upset occurs.
2. Do not exceed recommended dosage
3. Check w/Dr before drinking alcoholic beverages
4. Use cautiously with other depressant-type drugs
5. May cause drowsiness/dizziness.
   Drive with caution
6. Check with Dr. before taking any other medicine
7. Report hives/itching/problems in breathing to Dr
8. Promptly report unusual symptoms/effects to Dr

HYDROCO/ACETAM 5-325 TAB MAL

- GENERIC NAME: HYDROCODONE (hye-droe-KO-done) and ACETAMINOPHEN (a-seat-a-MIN-oh-fen)
- COMMON USES: This medicine is a combination of a narcotic and acetaminophen used to relieve moderate to severe Narcotic pain-relievers work by binding to opioid receptors in the brain and spinal cord, and acetaminophen decreases formation of prostaglandins, therefore reducing pain. This medicine may also be used to treat other conditions as determined by your doctor.
- HOW TO USE THIS MEDICINE: Follow the directions for using this medicine provided by your doctor. Take this medicine by mouth. THIS MEDICINE MAY BE TAKEN WITH FOOD if It upsets your stomach, although doing so may decrease Its effectiveness. Consult your doctor or pharmacist about alternatives for decreasing nausea (such as antihistamines, or down for 1-2 hours with minimal head movement). STORE THIS MEDICINE at room temperature in a tightly-closed container, away from heat, and light. IF YOU MISS A DOSE OF THIS MEDICINE and you are taking it regularly, take it as soon as possible. If it is almost time for your next dose, skip the missed dose and go back to your regular dosing schedule. Do not take 2 doses at once.
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- The information in this monograph is not intended to cover all possible uses, directions, precautions, drug interactions, adverse effects. This information is generalized and is not intended as specific medical advice. If you have questions about the medicines you are taking or would like more information, check with your doctor, pharmacist, or nurse. Database Edition 12.1 Information Expires February 22, 2012

SOCIAL SERVICE NOTES
(JANUARY 19-20, 2012)

MAT-SU REGIONAL MEDICAL CENTER
2500 South Woodworth Loop,
Palmer, AK 99945
(907) 861-6000

DUNKLE, GIRL OF
MRN#: V0207056
DOB: 01/17/2012
Age: 0
Unit: NUR
Bed: 113-07
Attending: PETERSON, LAURA JEAN

SOCIAL SERVICES NOTE

Date: 1/19/2012 17:28

Problems (In order of priority for this note)

NB + Drugs, Other

Note

A.F. AKA baby Girl Dunkle, was born to Janette Dunkle on 1/17/12.

I received referral for social services consult. Record reviewed. I spoke with Billie Jo, RN.

Social work consult initiated yesterday with extensive follow-up visit today. Janette is a single 26 year old woman residing in Wasilla at the home of her parents on 175 Park Ave.

Janette's newborn daughter, A.F. was born with weight of 4# 10 oz and APGARs of 9/9. Bonding with newborn very evident, with Janette holding baby during my visits and talking about her and to her in loving terms.

Janette has extensive social hx, which includes hx of heroin addiction. She is now on subutex, with Dr. White, as her provider for subutex. Janette reports that she has had one year of clean UAs. Her urine drug screen at admission was positive for opiates and buprenorphine (suboxone). Janette reports that she had a prescription for opiates (Norco) from and ED visit on 1/9/12 for kidney stones and this was confirmed in the ED record. Infant was positive for opiates, but otherwise negative per lab report.

Janette's four year old son, J.F. is in OCS custody. Hearing for potential termination of parental rights was to be 1/17/12, but was delayed until February. Janette's explained J.F.'s situation. He is currently staying with a paternal aunt. J.F.'s father is incarcerated at Palmer Correctional.

OCS case worker for Joshua is Jen Dale. I asked Janette what her understanding of OCS's plan regarding newborn is and she was not sure. We discussed that I would be contacting OCS for determination from OCS regarding whether they will be involved prior to dc from the hospital.

T/C to OCS. I spoke with Bobbi Jo Nault. Questions answered. She stated that they would staff the case and then decide if they were going to visit Janette here or at home. I had not heard back from Bobbi Jo by late this afternoon regarding a decision, so I have

left her a message to please call as soon as a decision is made.

Janette is aware that we are awaiting a decision from OCS regarding whether they will be visiting here or at home and what level of involvement they plan to have.

Regarding community resources, WIC and DKC in place. Janette is aware of ATAP, but has unemployment.

Janette had questions regarding establishing paternity. Questions answered. Janette has Affidavit for review. Janette states father of baby, Joshua Fleetwood, Sr., is at Palmer Correctional. Document can be taken to him for signature.

Plan

Awaiting decision from OCS regarding whether they will visit here or at home and what level of involvement they anticipate.

SOCIAL SERVICES NOTE

Date: 1/20/2012 09:10

Problems (in order of priority for this note)

Drgs@Del, Other

Note

I received a voice mail message last night from Bobbi Jo Nault of OCS stating that baby can be dc to mother's care and OCS will follow up at home. I have relayed this to Janette.

Janette has completed her portion of the Affidavit of paternity and she will have document taken to father of the child for his signature and then will send it to Vital Statistics. Question answered.

Plan

I anticipate dc to mother's care when medically able with plan for OCS home visit.

SOCIAL SERVICES NOTE

Date: 1/20/2012 18:12

Problems (in order of priority for this note)

Drgs@Del, Other

Note

Jennifer Dale and Christeen shared from OCS presented to the OB ward this morning. They stated that they were taking A.F. into OCS custody today. The troopers were called in to assist if needed. The OCS workers stated that they were taking A.F. in part due to the positive drug screen. I read the social work note and told them that she had NORCO prescribed during an ER visit on 01/09/12 and gave them a copy of the dictation.

Jenette's mother was asked to leave the room while OCS spoke with Jenette. Her mother was upset by this but left the room. She spoke with the troopers stating that she placed a recording device in the room.

Jenette was tearful as OCS explained that they would be taking A.F. today. Jenette stated that she has been seeing Dr. White, attending providence bread though program and taking regular UA's. Jennifer from OCS stated that she had not been in contact with her and so this could all be discussed at a TDM meeting scheduled for Monday at 9am.

There was a complication with the Car seat. Gwen, the carseat specialist from Mat Su Services for children and adults was called in to assist with putting the car seat together and making sure AYLA was secure in it because of her low birth weight. The family was

able to say good bye and A.F. was taken into OCS custody this afternoon.

Jannette is planning to attend A.F.'s doctor appointment on Monday at 1:45 this was approved by Jennifer from OCS.

Plan

Acknowledgement of receipt by person receiving child was signed by Jennifer Dale from OCS and A.F. was discharged into OCS custody this afternoon.

ADM GENERAL INFO
(JANUARY 20, 2012)

MAT-SU REGIONAL MEDICAL CENTER
2500 S. Woodworth Loop
P. O. Box 167, Palmer, AK 99645
Print Date & Time: 1/20/2012 20:43
Printed by: Larisa Shcherenkov

DUNKLE, JANETTE
MR#: V0069135
DOB: 8/18/1985 Age: 26
Unit: OB Bed: Hold
Attending: Fitzgerald, Michael

Adm General Info

- Father of Baby Name: Joshua McNeil Fleetwood Sr 01/17/12 16:06:53
- FOB Involved*: No* 01/06/12 15:02:07
- Is Paternity an Issue?*: No 01/17/12 16:06:58
  - Education: 12 01/17/12 16:07:05
  - Occupation: Homemaker 01/17/12 16:07:17
  - Race: CAUCASIAN 01/02/12 19:54:48
  - Religion: NONE 01/02/12 19:54:48
- ADOLESCENT SCREEN <18 YRS
  - Age: 26 01/02/12 19:54:47
- MEDS/SUBSTANCE USE
  - Alcohol*: No 01/02/12 20:03:29
  - Cigarettes: No 01/02/12 20:03:29
  - Marijuana*: No 01/02/12 20:03:30

- Cocaine/Crack*: No 01/02/12 20:03:30
- Other Illicit Drugs*: YES* 01/17/12 17:30:49
- Drugs: amt, freq, last used: Heroin last used may 2011, hydrocodone for pain from kidney stones last used 1/16/12 01/17/12 17:31:45
- Drugs Presc. for Withdrawal*: YES* 01/17/12 17:30:28
- Details: Subutex 01/17/12 17:30:44
- Prescr. Drug Misuse/Abuse Hx*: No 01/02/12 20:03:30

- AP PROC/LABS/VACCINES
- VACCINE HISTORY
  - Influenza: No 01/17/12 16:08:37
  - Tetanus + Pertussis (TDaP): Uncertain 01/17/12 16:09:13
  - Tetanus: Yes 01/17/12 16:08:47
  - When: within the last year 01/17/12 16:09:02
  - ANTEPARTUM PROCEDURES
  - # Wks Preg.@ 1st Prenatal Visit: 6 01/17/12 16:09:16
  - Inadequate Prental Care?* No 01/17/12 16:09:36
  - Antepartum Procedures: Ultrasound; BPP 01/17/12 16:41:07

- LAB RESULTS
  - Blood Type: O 01/17/12 17:39:38
  - Rh: Positive 01/17/12 16:09:47
  - Rhogam this pregnancy: No
    01/17/12 16:09:53
  - Group Beta Strep: Positive
    01/17/12 17:38:11
  - HBsAG: Negative

    01/17/1217:36:47

Adm General Info
Print Requested by: Larisa Shcherenkov