

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)

P. E. B.)

) OAH No. 10-0085-CSS

) CSSD No. 001064654

**DECISION AND ORDER GRANTING
MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

On March 1, 2010, CSSD filed a Motion for Summary Adjudication in this child support case. A hearing was convened on March 11th but Mr. B. could not be reached so the hearing was held on March 30th. Mr. B. participated by telephone; the Custodian, M. S., was available on March 11th but did not participate on March 30th. Erinn Brian, Child Support Specialist, represented CSSD. The Obligee child is J., 14 years of age.

Based on the record as a whole and after due deliberation, the Motion for Summary Adjudication is granted.

II. Facts

Mr. B.'s child support obligation for J. was set at \$245 per month in September of 2007.¹ On June 11, 2009, Mr. B. filed a petition for modification.² On June 15, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. B. provided income information.⁴ On January 13, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B.'s ongoing child support at \$50 per month, effective July 1, 2009.⁵ He appealed on February 17, 2010, asserting primarily, in relation to his child support obligation, that CSSD cannot garnish his Native dividend checks. Mr. B. also requested that an attorney be appointed to represent him in this child support matter and alleged that he was wrongly convicted in the criminal case that resulted in him being incarcerated.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

III. Discussion

CSSD's Motion for Summary Adjudication argues that CSSD should be granted summary adjudication because there are no material issues of fact necessitating a hearing, and the agency is entitled to judgment as a matter of law. The motion states that Mr. B.'s child support has been set at the minimum amount pursuant to Civil Rule 90.3, based on his incarceration. Mr. B. argues that CSSD cannot garnish his Native corporation dividends and also that an attorney should be appointed to represent him in this matter. Mr. B. also argued that he was wrongly convicted but this issue involves his criminal case and therefore is not relevant to this child support appeal.

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁷ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If undisputed material facts establish that one side or the other must prevail, the evidentiary hearing is not required.⁸

There is no disagreement about the facts relevant to resolution of this case. Mr. B. is incarcerated and does not have the ability to get out into the work force and earn an income. As a result of his lack of income, CSSD set his modified child support amount at \$50 per month effective July 1, 2009. A child support order of \$50 per month is the minimum amount allowed under Alaska law, and it may not be reduced below that amount.⁹ The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which has stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but that will not excuse the child support obligation.¹⁰ Thus, Mr. B.'s child support amount cannot be lowered below \$50 per month.

Mr. B.'s primary argument is that CSSD cannot garnish his Native corporation dividends for the purpose of satisfying his child support obligation. CSSD correctly responds that this argument has already been resolved by the Alaska Superior Court. On October 1, 2008, the Hon. R.E. issued an order, among other things, allowing CSSD to attach Mr. B.'s Native corporation

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

⁸ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁹ Civil Rule 90.3(c)(1)(B).

¹⁰ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

dividends to pay his child support obligation.¹¹ Mr. B. asserts that Judge E., his uncle, was found to have interfered in his criminal case and is no longer a Superior Court judge. There is no other evidence on this issue in the record. But even if there were evidence proving Mr. B.'s claims, Judge E.'s order remains a viable order of the court unless and until it is vacated or modified by another judge of the Superior Court or the Alaska Supreme Court. Neither CSSD nor the undersigned administrative law judge has the authority to change Judge E.'s order or direct CSSD to stop garnishing Mr. B.'s dividends.¹² CSSD thus may continue to attach Mr. B.'s Native corporation dividends to collect on his child support obligation.

Finally, Mr. B. requested that an attorney be appointed to represent him at the public's expense in this child support matter but his request cannot be granted. Neither CSSD's nor the OAH's statutes and regulations provide for an attorney to be appointed to represent a party to a child support case at public expense.

IV. Conclusion

There are no material facts in dispute that can be resolved at a formal hearing, so CSSD is entitled to summary judgment as a matter of law. Thus, in the absence of material issues of fact, CSSD's Motion for Summary Adjudication should be granted, and Mr. B.'s appeal should be dismissed.

V. Order

- CSSD's March 1, 2010, Motion for Summary Adjudication is GRANTED;
- Mr. B.'s appeal is dismissed;
- CSSD's January 13, 2010, Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 24th day of May, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ Exh. 8 at pg. 2.

¹² See AS 25.27.180(a).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of June, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]