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

IN THE MATTER OF:	)	
	)	OAH No. 10-0251-CSS
R. L. P.	)	CSSD No. 001007542
	)	

DECISION AND ORDER

I. Introduction

The state of Minnesota has requested that the Child Support Services Division (CSSD) initiate income withholding against R. L. P. in order to collect past due child support owed to the custodian, D. M. H.. Their children, T., S., K. and Q., have all been emancipated for many years.

CSSD sent Mr. P. a Notice of Initiated Income Withholding on April 2, 2010, which he appealed. A formal hearing was held on June 8th and July 21st of 2010. Mr. P. appeared in person; Ms. H. participated by telephone. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, income withholding in Mr. P.'s case is affirmed in the amount of $30,060.04, as calculated by the state of Minnesota as of the month of January 2010. Other than two minor adjustments for payments not previously credited to him in 2003 and 2004, Mr. P. has not proven a "mistake of fact" such that enforcement of the Minnesota order may be delayed or terminated.

II. Facts

Mr. P. and Ms. H. were married in 1966 and had four children, T. (born in June 1967), S. (September 1968), K. (May 1971) and Q. (September 1973). In 1983, while the parties were still married, the Minnesota County Court of C. W. County issued a protective order against Mr. P., granted Ms. H. temporary custody of the children and set Mr. P.'s child support at $75 per week, effective September 3, 1983.[1]

The next year, the parties decided to divorce after 17 years of marriage. They discussed terms of a settlement and may have jointly consulted with an attorney. Before the divorce hearing was held, in about May 1984, Mr. P. left Minnesota and moved to Alaska. On July 10, 1984, the Minnesota court entered a divorce decree, dividing the marital estate between them, awarding Ms. H. sole custody of the children and ordering Mr. P. to pay child support of $300

[1] Exh. 2.

per month.[2] There was no language in the court order specifying a per child monthly support amount. Nor was there any language in the decree regarding future termination of the child support obligation as the children emancipated.

In September 1985, S. came to Alaska to live with Mr. P.[3] She was 17 years old at the time. Mr. P. did not move the Minnesota court for a change of custody of S. She emancipated in 1986 and remained in Alaska.[4] One year after S. came to Alaska, K. followed. She was then 15 years old.[5]

In 1986, Alaska began enforcing Mr. P.'s child support order on Minnesota's behalf. CSSD collected child support totaling approximately $5,029.75 from the obligor from October 1986 through October 1991, primarily through garnishment of his annual Permanent Fund dividend (PFD).[6] These funds were transmitted to Minnesota.[7]

In 1987, Mr. P. obtained counsel and filed an action in Minnesota for a change of custody of both K. and Q., the two remaining minor children. The court denied his request as to Q. because he had always lived with Ms. H. and Mr. P. had not alleged any facts that would support a custody change for the boy.[8] However, the court knew that K. now lived with Mr. P., so it granted an evidentiary hearing to address a possible change of custody for K. and Mr. P.'s child support order for her.[9] Inexplicably, there is nothing in the record to indicate a hearing was ever held to resolve K.'s custody or address Mr. P.'s child support obligation for her. Thus, because Mr. P.'s child support order was never amended, it remained at $300 per month.

Also in the 1987 litigation Mr. P. claimed that the 1984 divorce decree was entered fraudulently regarding the division of real and personal property and the parties' debts and that he had not received all of the property due him in the divorce.[10] On July 21, 1987, the court denied Mr. P.'s motion to open the divorce decree and re-litigate the parties' property division and payments of debts. The court stated that any legal remedies for enforcement of the divorce

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2 Exh. 6 at pgs. 21-22.

3 Mr. P.'s Exh. A at pg. 6; received on July 14, 2010.

4 Exh. A at pg. 9.

5 Exh. 3 at pg. 2.

6 Exhs. 11 & 12.

7 Exh. 11; Exh. 7 at pgs. 22-24.

8 Exh. 3 at pg. 3.

9 *Id.*

10 Exh. 3 at pgs. 2-3.

decree were available to him through other litigation.[11] In the same order, the court granted Ms. H.'s motion to enforce the child support order and to hold Mr. P. in contempt for failure to pay support.[12] On October 20, 1987, the court amended its July 21st order by finding that Mr. P. had failed to pay support for the children pursuant to the divorce decree and entered judgment against him in the amount of $11,372.71 as of March 31, 1987.[13]

Sometime in 1987, Mr. P. moved to Hawaii, where he remained until the early 1990's.[14] Four years later, on May 28, 1991, the Minnesota County Court of C. W. County entered another judgment against Mr. P. for nonpayment of support. The judgment noted that Mr. P. had been ordered to pay $300 per month pursuant to a court order dated July 10, 1984, and that the total support owed through May 31, 1991 was $15,189, of which Mr. P. had already paid $3,360.91, for a remaining balance of $11,828.09.[15]

On February 4, 1992, the Alaska Superior Court registered the Minnesota support order following a request from that state pursuant to the Revised Uniform Reciprocal Enforcement of Support Act.[16] The newly registered order contained copies of the parties' 1984 divorce decree as well as the 1987 and 1991 C. W. County court orders.[17]

In 1992, Minnesota also initiated a petition to Hawaii to collect support from Mr. P. After being served with an administrative child support order on September 4, 1992, he requested a hearing to contest the notice and proposed order.[18] On December 21, 1992, the Family Court of the Second Circuit state of Hawaii issued a decision following Mr. P.'s hearing. The hearing officer found that Mr. P. owed arrears of $23,200.80 and that he would be ordered to make payments of $150 per month beginning January 1, 1993.[19] In his May 1993 statement, Hawaii indicated that Mr. P. had already paid $450 on the arrears up to that date.[20] According to

11 Exh. 3 at pg. 3.
12 *Id.*
13 Exh. 4 at pg. 2.
14 Mr. P.'s hearing testimony.
15 Exh. 5 at pg. 2.
16 Exh. 6 at pg. 1.
17 Exh. 6 at pgs. 11-25.
18 Exh. B at pgs. 22-28.
19 Exh. B at pg. 27.
20 Mr. P.'s Exh. B at pg. 28.

Minnesota's final accounting, three payments of $150 each were made in January, February and March of 1992.[21]

On August 24, 2009, Alaska's CSSD received a petition from Minnesota to initiate income withholding from Mr. P. pursuant to the Uniform Interstate Family Support Act (UIFSA).[22] The petition identified Mr. P.'s total arrears at $32,014.48 from July 10, 1984 through June 30, 2009, with the last payment having been received on November 3, 2008.[23] Minnesota subsequently updated the total amount due on the petition to $30,060.04 through the month of January 2010.[24] That is the amount at issue in this appeal.

CSSD served a Notice of Initiated Withholding on Mr. P. on March 10, 2010.[25] He requested an administrative review, after which CSSD issued an Administrative Review Decision on Notice of Initiated Income Withholding on April 2, 2010.[26] Mr. P. appealed on April 14, 2010.[27] The hearing was held on June 8 and July 21, 2010.

III. Discussion

Mr. P. is appealing 1) the 1983 restraining order; 2) the 1984 divorce decree – Mr. P. argues that he and Ms. H. had an agreement as to the terms of their divorce, but she failed to report those terms to the court after he left for Alaska, and as a result, the court issued a fraudulent order that did not reflect their agreement; 3) the denial of a credit for the cash he paid to Ms. H. – Mr. P. claims he paid the custodian cash in the amount of $6,335 for child support prior to the entry of their divorce decree in July 1984, which would have had him paid in advance through July 1986; 4) the denial of relief from his support obligation for the time he had custody of S. and K. – Mr. P. asserts he was S. and K.'s primary custodian from 1985 through their emancipation and in the process expended over $20,000 for their care,[28] so Ms. H. should reimburse him for their support for that time period; and 5) registration of the foreign support order issued by the Alaska Superior Court in 1992.

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21 Exh. 7 at pg. 24.

22 Exh. 1.

23 Exh. 1 at pg. 7.

24 Exh. 7 at pg. 28.

25 Exh. 7.

26 Exhs. 8 & 9.

27 Exh. 10.

28 Mr. P. also maintains he has paid Ms. H. $32,000 in support, but it is not clear whether that figure includes the $20,000 he claims he expended on S. and K.'s care while they lived with him. In sum, Mr. P. asserts he has a total investment of over $80,000 in this case.

On the basis of these claims, Mr. P. is requesting that all of the actions, judgments or pending judgments relative to this case be forever vacated; that all interest charges be absolved and vacated and that all of the liens filed as a result of this case be lifted and permanently expunged.

Mr. P. has the burden of proof by a preponderance of the evidence, meaning he must show that the fact he is asserting is more likely than not true.[29]

A. CSSD Is Authorized to Enforce the Minnesota Child Support Order

A support order issued by another state may be registered in Alaska for enforcement under the Uniform Interstate Family Support Act (UIFSA).[30] CSSD is the agency authorized in Alaska to administer and enforce UIFSA.[31] When CSSD receives a request from another state to enforce a child support order, Alaska is the "responding state" and CSSD is the "responding tribunal."[32] In its capacity as the responding tribunal, CSSD may enforce a support order received from an initiating state.[33] If there is no provision in the requesting state's order for immediate income withholding, CSSD may initiate income withholding, but must also provide notice to the obligor no later than the time the agency begins collecting on the order.[34]

An obligor served with notice of immediate income withholding may request a "hearing" by an informal conference officer in the agency to determine whether "the withholding is improper due to a mistake of fact."[35] A mistake of fact is limited to either a finding that the child support amount is incorrect or the identity of the obligor is mistaken.[36] No other legal defenses are available to the obligor.[37] If the conference officer rules against an obligor and orders that withholding will continue, he or she may request a formal hearing before an administrative law judge in the Office of Administrative Hearings.[38]

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29 2 AAC 64.290(e).
30 AS 25.25.601.
31 AS 25.27.020(a)(3).
32 AS 25.25.101(16)-(17).
33 AS 25.25.305(b)(1), (3).
34 AS 25.27.150(a).
35 AS 25.27.150(c).
36 AS 25.27.150(d).
37 *Id.*
38 AS 25.27.150(f).

B. Mr. P. Has Not Established a Mistake of Fact Sufficient to Defeat Income Withholding[39]

1. The Minnesota court orders are enforceable

Other than a mistake as to the obligor's identity, the primary basis for a claim of mistake of fact is that the child support amount being charged is incorrect. Herein lies the essence of Mr. P.'s appeal. Mr. P.'s initial challenge is of the 1983 restraining order – he claims Ms. H. got it for the purpose of keeping him from his possessions and that she prevented him from collecting necessary tools and other items when he later went to the family home to pick them up. Mr. P. also contests the 1984 divorce decree and assumedly, the 1987 and 1991 court orders that followed from it. Mr. P. testified that he and Ms. H. came to an agreement regarding how their marital estate was to be divided in mutual consultation with a neutral attorney, but that by the time the divorce hearing was held the attorney represented Ms. H. and neither she nor the attorney accurately portrayed the terms of the parties' agreement to the divorce court. The obligor claims that this misrepresentation created a fraudulent basis for the court order so he should not be held to its terms.

Neither CSSD, the administrative law judge nor, for that matter, the Alaska Superior Court – has any authority to disturb the restraining order or the divorce decree and related court orders issued in Minnesota concerning Mr. P. and Ms. H..[40] All of those orders were issued by courts of that state pursuant to Minnesota state law. Any order issued by an Alaska tribunal – administrative or judicial – that sought to amend or modify those orders would be unenforceable. In any event, Mr. P. already tried to re-litigate the terms of his divorce decree before the Minnesota court in 1987. His attorney raised the same arguments as here but the court denied his request, stating that Mr. P. had "failed to produce evidence of fraud in the entry of the judgment and decree of the dissolution of marriage and its terms concerning division of the real and personal property and payment of debts."[41] Twenty three years later and in a different state no less, Mr. P. cannot disrupt the court orders issued against him.

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39 The first basis upon which an obligor parent may dispute initiated income withholding is a mistake of fact as to the identity of the obligor. There is no dispute on that issue in this appeal.

40 As to the administrative law judge's general authority in child support matters, *see* AS 25.27.180.

41 Exh. 3 at pgs. 2-3.

Mr. P. did have options regarding custody of the children and his support obligation while any one of them was still a minor. He was obviously aware of that when he moved the C. W. County Court for a change of custody for K. and Q. in 1987. The court was receptive to his request regarding K. because she had been living in Alaska with him. The court offered Mr. P. an evidentiary hearing, which inexplicably he did not pursue, so the divorce decree's terms about custody and support remained unchanged from those entered in 1984, regardless of the fact that S. and K. had come to Alaska to live with him.

It was Mr. P.'s responsibility to secure modification of the divorce decree based on the apparent de facto change in physical custody of the two girls. The financial consequence of not following through even after initiating the modification process cannot be blamed on anyone else. Had he completed the modification in 1987, it is possible that his child support obligation would have been addressed at that time and provisions made for a per child amount or for a reduction in the monthly amount due when the remaining children on the order reached the age of emancipation. Unfortunately, there is nothing in the record to indicate a hearing was ever held to resolve K.'s custody or to address Mr. P.'s child support obligation. Mr. P.'s child support order was never amended after 1984, so by law, it remained at $300 per month until the youngest child became 18 years old in September 1991.

This same reasoning applies regarding the fact that Mr. P. was bearing the expense of S. and K. living in his home. The parties' divorce decree named him the noncustodial, obligor parent. To reverse roles with Ms. H. would have required a modification of that order. There is no legal authority for Mr. P. to announce that she now owes him support for S. and K. in <u>his</u> child support case. She has no obligation under their divorce decree to pay him for supporting the children who came to Alaska to live with him. An alternative may have been a claim for reimbursement of expenses Mr. P. paid on the girls' behalf, but if that type of relief were even available it would have required him to file an action in Minnesota and it does not appear that he ever pursued it.

2. <u>There is insufficient proof of cash payments</u>

Mr. P. also believes that he is entitled to a credit against his support obligation for the cash payments he gave Ms. H. before he left Minnesota in 1984. He testified he had paid her $6,335 toward his child support obligation prior to July 1984 when the divorce decree was

issued.[42] He also claims at least some of these payments were made pursuant to the restraining order that directed him to pay $75 per week in child support while that order was in effect. Mr. P. maintains that the total amount of support he paid the custodian before he left Minnesota would have covered his support obligation through mid-1986.

Ms. H. contests Mr. P.'s claim that he gave her any cash for child support prior to leaving Minnesota in 1984. Further, the custodian claims that Mr. P. has not made any voluntary support payments; that in fact, the only payments he's made have been the result of forced garnishments, primarily of his Alaska Permanent Fund dividend and paychecks.

Mr. P. has not met his burden of proof regarding cash payments. The parties gave opposing testimony and Mr. P. submitted no other evidence. Ms. H.'s backup consists of the accounting filed by Minnesota. Under these circumstances, Mr. P. cannot prove by a preponderance of the evidence – more than 50% of the evidence – that he made those cash payments. The obligor may be of the belief that one cannot document cash payments, but it is always possible for an individual to get a signed receipt from the recipient or to make the cash payment via money order. In the absence of sufficient proof, Mr. P. is not entitled to any credit for cash payments he claims to have made to Ms. H.

Even if the obligor could prove that he gave Ms. H. cash before he left Minnesota in May 1984, it is doubtful he would be entitled to a credit in this child support case for the money he gave her. It is more likely that the funds would be viewed not as child support but rather as a financial transaction that occurred between husband and wife within the context of the marital estate prior to their divorce. After all, the divorce decree was not issued until July 1984, so there would be no basis upon which to claim that the money Mr. P. gave Ms. H. was in compliance with the child support order contained in that decree.

3. Mr. P. is entitled to two additional credits for payments made

It should be noted that Mr. P. has made payments totaling $25,362.03 on his child support obligation over the years.[43] Mr. P. has established that some of the payments he's made have not been credited to him. First, his November 26, 2003 paystub shows that a total of

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[42] Mr. P. described a complicated series of transactions that variously involved a workers' compensation check and credit against the purchase of an International pickup, among other things. To the extent that any of these dealings would have resulted in Ms. H. receiving monetary value from Mr. P., they are meant to be included in the discussion. All of the separate claims are not specified here due to their ultimate similarity.

[43] Exh. 7 at pg. 28.

$1,983.03 was collected from him for child support during that calendar year.[44] However, an examination of Minnesota's final accounting statement shows that in 2003, he was only credited with payments of $1,794.17,[45] a shortfall of $188.86. CSSD cannot explain the discrepancy so Mr. P. is entitled to an additional credit of $188.86 for 2003. Other than the fact that this amount was paid on or before November 26, 2003, Mr. P. has not established the specific date(s) these payments were collected from his pay. Thus, for lack of a better date, the credit should be made to his account in November 2003.

Mr. P. is also requesting complete credit for payments made from his paychecks in 2004. His November 26, 2004 paystub indicates a total of $2,644.04 was collected from him for child support that year.[46] The final statement submitted by Minnesota indicates that in 2004 he was only credited with payments totaling $2,549.61, a shortfall of $94.43.[47] Again, the difference cannot be resolved, so Mr. P. is entitled to an additional credit against his support obligation of $94.43 for 2004, to be applied to his account in November 2004.

Mr. P. also raised the question whether any support payments sent to Minnesota by Hawaii were credited to his account. In administrative proceedings initiated in Hawaii while he lived there, Mr. P. was ordered to pay $150 per month.[48] In an accounting issued in May 1993, that state's child support agency reported that Mr. P. had paid $450 to date on his child support arrears.[49] Three payments of $150 each were received by Minnesota in January, February and March of 1992,[50] so those payments have been attributed to him.

Mr. P. lastly claims that he was not given credit for a $600 child support payment made pursuant to the garnishment of his tax return on May 2, 2008.[51] Minnesota's final accounting indicates that in May 2008, child support payments were made totaling $1,792.43.[52] This total is larger than $600, so it is possible that the $600 payment was received and included in the total amount reported for May 2008. Thus, Mr. P. has not established by a preponderance of the

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44 Mr. P.'s exhibits submitted on July 22, 2010, at pg. 2. He testified this was his final paycheck for 2003.

45 Exh. 7 at pgs. 26-27.

46 Mr. P.'s documents received on July 22, 2010, at pg. 3.

47 Exh. 7 at pg. 27.

48 Mr. P.'s Exh. B at pg. 27.

49 Mr. P.'s Exh. B at pg. 28.

50 Exh. 7 at pg. 24.

51 Mr. P.'s Exh. C.

52 Exh. 7 at pg. 28.

evidence that this particular payment was not credited to him, so he is not entitled to the application of a credit in that amount.

4. The Minnesota support order was properly registered in Alaska in 1992

Finally, Mr. P. appealed initiated income withholding because he asserts he was never served with the Minnesota child support order as registered by the Alaska Superior Court in 1992. He argues that if a signature was required to acknowledge receipt and one appeared on the documents, it was a forgery.

In 1992, registration of foreign support orders in Alaska was governed by the Uniform Reciprocal Enforcement of Support Act (URESA).[53] The act provided that a parent seeking to register a foreign support order had to make the appropriate filing with the clerk of court and provide, among other things, a sworn statement containing the "last known mailing address of the obligor" in addition to an accounting of the total amount of child support owing.[54] The act stated that a proper filing of the foreign order "constitute[d] registration,"[55] which was then "promptly" to be followed by service of the foreign order on the obligor by certified or registered mail at the address given.[56] Upon registration of the foreign support order, the child support agency was authorized to begin enforcement.[57] URESA contained no provision requiring the obligor's signature or acknowledgment be obtained in order to accomplish registration of the foreign support order and thus allow enforcement.

In this case, the petition to register the foreign support order contained Ms. H.'s sworn statement that gave Mr. P.'s last known address as 2200 South Fern Street in Wasilla, Alaska.[58] The Clerk of the Alaska Superior Court determined that the documents submitted with the Minnesota court order were adequate and thus registered it in Alaska. The clerk issued a notice to him at that address and enforcement began.[59]

Mr. P. cannot successfully challenge the 1992 registration of his foreign support order. He has not submitted any evidence to prove that registration of the foreign support order in the Alaska Superior Court was improper. Even if he had, any challenge to that order would have

53 AS 25.25.010.
54 AS 25.25.254(c).
55 *Id.*
56 AS 25.25.254(d).
57 *Id.*
58 Exh. 6 at pg. 4.
59 Exh. 6 at pg. 1.

had to have been timely filed in the court that registered the order. The undersigned administrative law judge has no authority to overturn an order issued in the Alaska Superior Court. Moreover, registration of the foreign support order in 1992 provided the authority for the child support agency to enforce the order at that time. But the question whether registration of the order in 1992 was proper is a moot issue today. The Minnesota child support order has been re-registered in Alaska pursuant to a UIFSA petition filed with CSSD on August 24, 2009, and it is pursuant to that authority that CSSD is enforcing Mr. P.'s child support obligation.

IV. Conclusion

The state of Minnesota submitted a UIFSA petition to Alaska requesting that CSSD collect child support arrears from Mr. P. in the amount of $30,060.04 as of January 2010. On March 10, 2010, CSSD issued a Notice of Initiated Income Withholding to Mr. P. at his last known address and began enforcing the order. Other than two additional credits totaling $188.86 for 2003 and $94.43 for 2004, Mr. P. has not met his burden of proving by a preponderance of the evidence that the Notice of Initiated Income Withholding was incorrect. Income withholding based on child support arrears totaling $30,060.04 through January 2010 order should be affirmed, with two minor adjustments based on the additional credits due to Mr. P. for 2003 and 2004.

V. Child Support Order

1. The Notice of Initiated Income Withholding dated March 10, 2010, is affirmed as follows: Mr. P. is liable for child support arrears in the amount of $30,060.04, as calculated by the state of Minnesota as of January 2010;
2. The amount in paragraph #1 is subject to an additional credit of $188.86 for payments Mr. P. made in 2003, to be applied to his account in November 2003; and he is also entitled to an additional credit of $94.43 for payments made in 2004, to be applied to his account in November 2004;
3. All other provisions of the Notice of Initiated Income Withholding issued by CSSD on March 10, 2010, remain in full force and effect.

DATED this 30th day of December, 2010.

By: *Signed*
Kay L. Howard
Administrative Law Judge

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 19th day of January, 2011.

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

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