

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

IN THE MATTER OF:)

J. J. N.)

) OAH No. 10-0319-CSS

) CSSD No. 001137615

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

I. Introduction

On July 7, 2010, CSSD filed a Motion for Summary Adjudication in this child support case. A hearing was convened on July 22, 2010. Mr. N. participated by telephone, as did the custodial parent, C. I. H. Erinn Brian, Child Support Specialist, represented CSSD. The Obligee child is A., 5 years of age.

Based on the record as a whole and after due deliberation, the Motion for Summary Adjudication is granted and CSSD's March 26, 2010, Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

Mr. N.'s child support obligation for A. was set at \$228 per month for one child in March 2006.¹ On August 7, 2009, Mr. N. filed a petition for modification.² On January 15, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ CSSD conducted the modification review and on January 13, 2009, issued a Modified Administrative Child Support and Medical Support Order that set Mr. N.'s ongoing child support at \$50 per month, effective February 1, 2010.⁴ He appealed on June 15, 2010, asserting that he has been incarcerated since A.'s birth and his \$50 support order should be backdated.⁵

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

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

the agency is entitled to judgment as a matter of law. The motion states that Mr. N.'s child support has been set at the minimum amount pursuant to Civil Rule 90.3, based on his incarceration. Mr. N. testified that he will be incarcerated until February 6, 2012, and that he does not mind paying support; in fact, he contacted Ms. H. independently and has paid support directly to her. He provided receipts that show he directed disbursements for support to Ms. H. in the total amount of \$300 from his inmate trust account. The payments were: \$100 on April 26, 2010; \$100 on May 25, 2010; \$50 on June 8, 2010; and \$50 on June 13, 2010.⁶ Ms. H. verified she received those funds and Mr. N. should be credited with those payments.

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

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ If the newly calculated child support amount is more than 15% higher or lower than the previous support amount, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified.

Civil Rule 90.3(a)(1) provides that a parent's child support amount is to be calculated based on his or her "total income from all sources." If the parent is incarcerated and does not have any income, the child support must be set no lower than \$50 per month. This is the minimum amount allowed under Alaska law, and it may not be reduced below that figure.¹⁰ The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which 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.¹¹ Mr. N. is incarcerated and does not have the ability to get out into the work force and earn

⁶ Received on August 4, 2010.

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 AS 25.27.190(e).

¹⁰ Civil Rule 90.3(c)(1)(B).

¹¹ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

income. As a result of his lack of income, CSSD set his modified child support amount at \$50 per month effective February 1, 2010.

Mr. N. has not challenged the child support calculation. Rather, his appeal concerns the effective date of the modification. Mr. N. requested that his support be set at \$50 per month as of A.'s date of birth because he has been incarcerated since then.

A modification is effective beginning the first of the month after CSSD serves the other party with notice that a modification has been requested.¹² In this case, CSSD issued the notice of modification to Ms. H. on January 15, 2010, so this modification is effective as of February 1, 2010.¹³ It is indeed unfortunate that CSSD did not serve Ms. H. any sooner than five months after Mr. N. requested the modification review, but there is no mechanism in the law that allows for a different modification date. To make the modification effective before the date allowed by CSSD's regulation would be contrary to the law. Thus, the effective date of February 1, 2010, must stand.

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. Absent material issues of fact, CSSD's Motion for Summary Adjudication should be granted, and Mr. N.'s appeal should be dismissed. Mr. N. should be credited with the direct payments he made to Ms. H.

V. Order

- Summary Adjudication is GRANTED; Mr. N.'s appeal is dismissed and the March 26, 2010, Modified Administrative Child Support and Medical Support Order is affirmed;
- Mr. N. is entitled to credit for direct payments made to Ms. H. in the amount of \$100 on April 26, 2010; \$100 on May 25, 2010; \$50 on June 8, 2010; and \$50 on June 13, 2010, for a total of \$300.

DATED this 21st day of September, 2010.

By: Signed _____

Kay L. Howard
Administrative Law Judge

¹² 15 AAC 125.321(d).

¹³ Exh. 3.

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 8th day of October, 2010.

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

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