

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

IN THE MATTER OF:)	OAH No. 10-0375-CSS
R. J. P.)	CSSD No. 001098160
_____)	

ORDER GRANTING SUMMARY ADJUDICATION

On August 16, 2010, the Child Support Services Division (Division) filed a Motion for Summary Adjudication in this appeal, alleging that no material facts are in issue and that it is entitled to judgment as a matter of law. R. J. P. is the obligor in this case, and W. L. is the custodial parent.

On July 9, 2010, a hearing was held to consider Division's motion. Mr. P. participated. Ms. L. did not participate.¹ Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The record was left open for ten days to allow Ms. L. an opportunity to request that the hearing be rescheduled. No request was filed.

This case is Ms. L.'s appeal following the denial of her request to increase Mr. P.'s monthly child support obligation for their children, X. and Z. The Division issued a Denial of Modification Review order on May 29, 2010. The Division based its denial on its child support calculations using Mr. P.'s current income, including his native corporation dividends. These calculations showed that Mr. P.'s child support based on that income would not be a 15 percent increase from his current child support amount, which is set at the minimum of \$50 per month.

Mr. P. asked to continue the hearing until the resolution of other proceedings which would not be impacted by the outcome of Ms. L.'s appeal in this case. Mr. P.'s request was denied. At formal hearing, Mr. P. appeared to be confused about the nature of the proceeding he was involved in. His confusion was apparently due in part to his reluctance to listen to the

¹ Ms. L. did not appear or provide a phone number to call for the hearing as instructed on the notice sent to her address of record. There was no answer at any of her phone numbers of record at the time set for the hearing. A message was left for her at one of those numbers, but she did not file a request to reschedule the hearing.

explanations provided, rather than to what was being whispered to him by the fellow inmate that he had chosen to assist him.²

Ms. L. did not file a response to the Division's motion. She did not participate in the hearing on the motion. In her request for a formal hearing, Ms. L. merely explained that she needs child support from Mr. P. Ms. L. also explained that Mr. P. receives dividends from the native corporation CIRI.³

When one party asks for summary adjudication, a party wishing to have an evidentiary hearing must show that there is a need to have a hearing to prove issues of disputed fact regarding the action being appealed.⁴ The issues raised by Ms. L. do not preclude summary adjudication. The Division correctly determined that it should not increase Mr. P.'s support from the minimum amount of \$50 per month based on Mr. P.'s continued lack of income due to his incarceration.⁵

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.⁶ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.⁷ Ms. L. did not challenge the Division's determination that even including Mr. P.'s native dividends in calculating his ongoing child support obligation would not result in a 15 percent increase. Ms. L. did not assert that there was any other change in circumstances that would justify a modification.

The Division's Motion for Summary Adjudication is GRANTED. This case will not be scheduled for formal hearing.

² Recording of Hearing-Testimony of Mr. P.

³ Recording of Hearing & Exhibit 4.

⁴ *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

⁵ *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

⁶ Alaska Civil Rule 90.3(h)(1).

⁷ Alaska Civil Rule 90.3, Commentary X.

Child Support Order

The Division's Denial of Modification Review order issued on May 29, 2010 is affirmed.

DATED this 7th day of September, 2010.

By: Signed
Mark T. Handley
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 23rd day of September, 2010

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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