

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

IN THE MATTER OF:)	OAH No. 10-0385-CSS
K R)	CSSD No. 00134693
_____)	

ORDER GRANTING SUMMARY ADJUDICATION

On August 24, 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. K R is the obligor in this case, and C F is the custodial parent.

On July 9, 2010, a hearing was held to consider Division's motion. Mr. R participated. Ms. F did not participate.¹ Erinn Brian, Child Support Services Specialist, represented the Child Support Services Division (Division).

This case is Mr. R' appeal following the establishment of his child support order for his child A after the Division issued an Amended Child and Medical Support order on June 11, 2010 and a Denial of Petition for Genetic Testing order on June 8, 2010, but he did not clearly specify what his concerns were.² In its motion the Division argued that Mr. R would have to file an action in court to disestablish Mr. R' paternity of A and that his child support could not be set lower than the minimum of \$50 per month.

At formal hearing, Mr. R made it clear that he did not dispute his paternity of A. Mr. R explained that he was concerned about his inability to earn enough even to pay \$50 per month in child support while he is in prison. Mr. R was also concerned about the interest that would build up while he is in prison and the possibility that the Division would take action against his drivers' license because he would fall behind in his payments. Ms. R indicated he would initiate the process to request that Ms. F's contact information.³

¹ Ms. F 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 her phone number of record at the time set for the hearing.

² Ex.8.

³ Recording of Hearing-Testimony of Mr. R.

When one party asks for summary adjudication, a party wishing to have an evidentiary hearing to 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 Mr. R do not preclude summary adjudication. The Division correctly set Mr. R' support to the minimum amount of \$50 per month based on Mr. R' continued lack of income due to his incarceration.⁵ The law requires that child support be set at no less than \$50 per month.⁶ The Division is required to charge interest on outstanding child support arrears.⁷ The Division will not be able to take action against Mr. R' drivers' license if he is unable to pay his child support.⁸

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

Child Support Order

The Division's Amended Administrative Child and Medical Support Order issued on June 11, 2010 and the Division's Denial of Petition for Genetic Testing order issued on June 8, 2010 are affirmed.

DATED this 25th day of August, 2010.

By: Signed
Mark T. Handley
Administrative Law Judge

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 *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).

⁷ *Alaska Statute* 25.27.020(a)(2)(B).

⁸ *See State, Dep't of Revenue, Child Support Enforcement Div. v. Beans*, 965 P.2d 725, 727-728 (Alaska 1998) (ruling that an "inability to pay" defense is a constitutionally required defense to enforcement of the law requiring revocation of a driver's licenses for failure to pay child support).

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 13th 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.]