

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

IN THE MATTER OF)	
)	OAH No. 10-0466-CSS
F U L. J)	CSSD No. 001163258
_____)	

DECISION & ORDER ON SUMMARY ADJUDICATION

I. Introduction

A hearing was held to consider a Motion for Summary Adjudication in this appeal that was filed by the Child Support Services Division, (Division) alleging that no material facts are in issue and that it is entitled to judgment as a matter of law. Erinn Brian, Child Support Services Specialist, represented the Division. F U L. J is the obligor in this case. Mr. J appeared at the hearing but did not participate in the final status conference scheduled in this appeal. L L. T, the custodial parent, participated only in part of the hearing.¹

This case is a Mr. J's appeal of the Division's order establishing Mr. J's child support obligation for the child, F U Jr. Mr. J's appealed the Division's order because genetic tests showed that he is not biological father of F U Jr.

Because it is undisputed that Mr. J completed and signed a form acknowledging his paternity of F U Jr. after July 1, 1997, and because Mr. J failed to take advantage of the opportunity provided him to contest that acknowledgment in superior court before action was taken on the Division's motion, the Administrative Law Judge concludes that the Division's motion should be granted.

II. Facts

F U Jr. was born on June 21, 2010. Ms. T applied for the Division's service for F U Jr., in November of 2009. Mr. J's paternity of F U Jr. was established by an acknowledgement of paternity that Mr. J completed and signed shortly after the child was born. As a result Mr. J was named as the father of F U Jr. on the child's birth certificate. Mr. J has not asserted that he withdrew his acknowledgement of paternity within 60 days of the date he signed it or that he has ever filed an action in court to disestablish his paternity of F U Jr.

The Division issued an Administrative Child and Medical Support Order on June 18,

¹ Recording of Hearing and Status Conferences.

2010. This order set ongoing monthly child support as well as arrears going back to November of 2009. Mr. J requested an administrative review of this decision explaining that genetic tests had been conducted by the Native Village of City A, which showed that he was not the biological father of F U Jr.² The Division treated this appeal as a request for genetic testing, which it denied, explaining that Mr. J would need to file a motion in superior court to disestablish his paternity of F U Jr. The Division also issued an Amended Administrative Child and Medical Support Order, which is the subject of this appeal.

The Division's Amended Administrative Child and Medical Support Order was issued on August 25, 2010. This order set ongoing child support at \$258 per month effective September 1, 2010. This order also established arrears going back to November of 2009, totaling \$2,352. Mr. J then filed his request for a formal hearing.³

At the hearing on October 5, 2010, Ms. T admitted that Mr. J was not the biological father of F U Jr. Ms. T explained that the biological father of F U Jr. had died. Ms. T indicated that she had initiated proceedings to have the birth certificate changed. The Division stated that its research indicated that only a name change request had been filed with the superior court in City A, and that there was no disestablishment action pending.

A status conference was scheduled for October 19, 2010, in order to give Mr. J an opportunity to file a disestablishment action in court before his child support obligation was established in a final administrative order. At the status conference on October 19, 2010, Mr. J stated that he had obtained the paperwork for filing a disestablishment action from the court, but he admitted that he had not yet filed it. Mr. J terminated the status conference without making it clear whether or not he was interested in an additional opportunity to file a disestablishment action in court before his child support obligation was established.

After the status conference on October 19, 2010 a Notice of Status Conference was issued scheduling a final status conference for November 4, 2010 in order to give Mr. J a final opportunity to file a disestablishment action in court before his child support obligation was established in a final administrative order. The notice explained that if Mr. J failed to take

² The Division's Amended Administrative Child and Medical Support Order is found at exhibit 4.

advantage of that final opportunity, the Division's motion would be ruled on and he might lose his last chance to have the child support order vacated so that he would not have to obligation to pay arrears and ongoing child support.

Mr. J did not file any response to this notice. There was no answer at Mr. J's phone number of record at the time set for the status conference.

III. Discussion

Because Mr. J filed an affidavit of paternity when the child was born, his paternity of F U Jr. has been legally established. That paternity establishment must be given the weight of a court judgment under Alaska and federal law. Only an Alaska court can set aside or overturn that paternity establishment through a paternity disestablishment action. Mr. J's delay in filing such an action could limit any relief Mr. J might receive from having to pay child support arrears.

Mr. J admits that he completed and signed form acknowledging paternity his paternity of F U Jr. that meets the requirements of AS 18.50.165(a) that he signed after July 1, 1997 and that he did not timely withdraw that acknowledgment.

When such acknowledgment is made, it makes the acknowledged father the legal parent of the child with all the legal rights and responsibilities of a parent, including the duty of support. Such an acknowledgment may only be withdrawn or contested under specific limited circumstance. Alaska Statute 25.20.050 (1) Provides:

(1) The tribunal shall consider a completed and signed form for acknowledging paternity that meets the requirements of AS 18.50.165(a) as a legal finding of paternity for a child born out of wedlock. For an acknowledgment signed on or after July 1, 1997, the acknowledgment may only be withdrawn by the earlier of the following dates: (1) 60 days after the date that the person signed it, or (2) the date on which judicial or administrative procedures are initiated to establish child support in the form of periodic payments or health care coverage for, or to determine paternity of, the child who is the subject of the acknowledgement. **After this time period has passed, the acknowledgment may only be contested in superior court on the basis of fraud, duress, or material mistake.** The parent wishing to contest the acknowledgment carries the burden of proof by a preponderance of the evidence. Unless good cause is shown, the court may not stay child support or other legal responsibilities while the action to contest the acknowledgment is pending. [Emphasis added].

³ Mr. J's appeal and the results of genetic testing are found at exhibit 5.

As can be seen from the language above, those limited circumstances do not include an obligor parent showing that he is not the biological parent of the obligee child in the context of an administrative appeal of a child support order issued by the Division. Mr. J failed to raise any issue in his appeal that would preclude summary judgment. Mr. J has not shown there is an issue of fact that would require an evidentiary hearing to resolve.⁴

IV. Child Support Order

1. The Division’s Motion for Summary Adjudication is GRANTED.
2. The Division’s Amended Administrative Child and Medical Support Order was issued on August 25, 2010, is affirmed.

DATED this 9th day of November, 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 17th day of December, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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

⁴ French v. Jadon, Inc., 911 P.2d 20, 23 (Alaska 1996).