

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

IN THE MATTER OF:)
)
E. W. S.)
)
) OAH No. 10-0539-CSS
) CSSD Case No. 001128422
_____)

DECISION AND ORDER

I. Introduction

This concerns the obligation of E. W. S. for the support of his children R. R. S., Z. P. S., and E. A. S. The custodian of record is V. O. (R.). The case is before the Office of Administrative Hearings on appeal from a modified administrative support order issued on May 21, 2010.

II. Facts

A. Procedural History

In March, 2005, the Child Support Services Division issued an administrative child support order in CSSD No. 001128422 establishing Mr. S.'s support obligation for R., setting 2005 arrears and ongoing support at the amount of \$637 per month based on imputed income of \$48,808.44 per year, primarily consisting of imputed wages for an Alaska insulation worker (\$22.77 per hour).¹ Arrears for 2003 and 2004 were set at the rate of \$406 and \$260 per month respectively, based on actual reported income.² A copy of that order was personally served on Mr. S. on June 25, 2005, along with documents in a separate case, CSSD No. 001132841.³

On July 26, 2005, the division initiated a proceeding to add Z. to the administrative support order.⁴ On August 26, 2005, the division issued an amended administrative support order, changing the amount of arrears on the March 26, 2005, order from a total of \$6,005 to a total of \$6,655, to correct an arithmetic error in the

¹ Ex. 1, pp. 1, 7, 10; Ex. 4, p. 4..

² Ex. 1, pp. 1, 7-9.

³ Ex. 1, p. 11. The documents served in CSSD No. 001132841 consist of the standard documents for establishment of a child support order. The record does not indicate the identity of the child in that case.

⁴ Ex. 3.

initial order.⁵ The amended order identifies Z. as a child subject of the order, although at that time Z. had not yet been added to the order and the amount of support ordered was for one child only.⁶ The amended order was served on Mr. S. by certified mail on July 7, 2006.⁷ As of August, 28, 2006, Mr. S. was current on the original and amended order, and enforcement of the order was suspended.⁸

E. S. and V. O., the parents of R., Z. and E., separated permanently in May, 2007.⁹ Initially, they shared custody, but Ms. O. has had sole custody since early in 2008.¹⁰ Ms. O. applied for services from the division in March, 2008.¹¹ On January 8, 2009, the division initiated proceedings to add Z. and E. to the amended order.¹² On September 4, 2009, the division requested the director to authorize removal of Z. from the August 26, 2005, order, on the ground that Z. had been mistakenly added to the order without the appropriate procedure.¹³ The division notified Mr. S. by mail on February 3, 2010, that it would make the correction and remove Z. from the order unless he provided good reason to the contrary.¹⁴ On April 27, 2010, the director granted the request for relief, implicitly authorizing removal of Z. from the August 26, 2005, amended order, and notified Mr. S. of his right to appeal the director's decision under 15 AAC 125.125.¹⁵

On May 4, 2010, the division received documents from Mr. S. responding to the February 3, 2010, letter.¹⁶ Mr. S. objected to the withholding of child support from his wages¹⁷ and to the agency's jurisdiction.¹⁸ On May 11, 2010, the division issued an

⁵ Ex. 2, Ex. 4. See Ex. 1, p. 1 (setting arrears at \$6,005), p. 7 (showing total arrears as \$6,655). \$6,655 was the correct amount based on four months at \$406 per month, 12 months at \$260 per month, and three months at \$637 per month. Apparently, Mr. S. had objected to

⁶ Ex. 4, p. 1.

⁷ Ex. 4, p. 12. The letter was signed for by Q. C. S., as Mr. S.'s authorized representative.

⁸ The division's accounting states that a payment brought the account current as of August 28, 2006, and that no further charges accrued on the order until July 18, 2008. Ex. 15, p. 19. Ms. O. had withdrawn from services in September, 2005. S. Supp. Ex. A.

⁹ Ex. 7, p. 2.

¹⁰ *Id.*; Ex. 7, p. 5.

¹¹ Ex. 14, p. 12.

¹² Ex. 5, p. 1.

¹³ Ex. 6.

¹⁴ Ex. 8.

¹⁵ Ex. 9. Mr. S. had responded to the February 3, 2010, letter at some point after he received it on, according to his statement, March 6, 2010. See Ex. 10.

¹⁶ Ex. 11. The document, at page 2, references the division's February 3, 2010, letter.

¹⁷ Ex. 1, p. 5 ("I demand that you...cease and desist all unlawful taking of funds from the wages of Eric W S....").

amended administrative support order, removing the prior order's reference to Z.¹⁹ The division treated the documents it had received from Mr. S. on May 4 as a response to the request for relief that had already been granted, and advised Mr. S. of his right to appeal "the order that added your two younger children to your support obligation" which according to the division "was completed with the order issued May 12, 2010."²⁰ However, it was not until May 21, 2010, that the division actually issued a modified order adding Z. and E. to the May 11, 2010 amended order.²¹ The modified order set ongoing support for three children at \$923 per month, effective February 1, 2009, based on Mr. S.'s reported 2009 wages (\$39,428), an Alaska Permanent Fund dividend (\$1,305), and an Alaska Native corporation dividend (\$368).²² Arrears for Z. and E. were set at \$286 per month in 2009.²³ The modified order was served on Mr. S. by certified mail, which he signed for on June 10, 2010.²⁴ The division calculates that as of May 18, 2010, Mr. S. owed a total of \$10,958.95 under the original and amended orders.²⁵

The division received documents from Mr. S. on June 9 and August 11, 2010.²⁶ The latter set of documents include this statement by Mr. S.: "At this time I am requesting abatement of action pending the outcome of the ongoing administrative process to settle and close this matter."²⁷ That letter appears to refer to Mr. S.'s June 12, 2010, response to the division's modified order of May 21, 2010, which had returned the modified order to the division "for Settlement and Closure."²⁸ The division treated Mr.

¹⁸ *Id.* ("All future proceedings concerning my family must be held in a lawful court of original jurisdiction with an Article III judge presiding.... The only other original jurisdiction would be a Traditional Dena'ina Tribunal.")

¹⁹ Ex. 12. The new amended order also reduced the amount of arrears to \$6,005, reflecting payments totaling \$650 in 2003. *Id.*, pp. 1, 4, 6.

²⁰ Ex. 13.

²¹ Ex. 14.

²² Ex. 14, p. 7.

²³ Ex. 14, p. 8. No arrears accrued for the additional children prior to 2009, because the existing support order for one child called for a greater support amount in 2008 than the modified support order for three children.

²⁴ Ex. 14, p. 5.

²⁵ Ex. 15, pp. 8-10.

²⁶ Ex. 15, Ex. 16.

²⁷ Ex. 16, p. 1.

²⁸ Included with the packet of documents is a letter from Mr. S. dated June 12, 2010, referencing his return of USPS No. 2009 2820 0002 4274 4953 (the tracking number for the May 21, 2010, modified order) "for Settlement and Closure." See Ex. 14, p. 5; Ex. 16, p. 3.

S.'s June 12, 2010, letter as an appeal from the modified order and referred the matter to the Office of Administrative Hearings.²⁹

A hearing was scheduled and notice was provided to Mr. S. by mail. The assigned administrative law judge convened the hearing at the scheduled time and attempted to contact Mr. S. at his telephone number of record. Mr. S. was not available and a message was left informing him to contact the Office of Administrative Hearings if he wished to reschedule the matter. Mr. S. submitted two packets of documents, which were received on November 15 (S. Supp. Ex. A), and November 16 (S. Supp. Ex. B).

B. Material Facts

E. S. and V. O. (R.) are the parents of three children: R. R. S., Z. P. S., and E. A. S., born in 2003, 2004 and 2005 respectively.³⁰ Mr. S.'s actual total income in 2009 was \$41,101, and his adjusted income was \$33,576.³¹ The division issued an administrative support order establishing Mr. S.'s support obligation for R. in 2005; on January 8, 2009, the division served a petition to modify the order by adding Z. and E. to it and adjusting the support amount.³²

III. Discussion

Mr. S.'s position, as stated in the documents he provided to the Office of Administrative Hearings following the scheduled hearing date, seems to be that by making his acceptance of the documents served on him conditional on his own terms of acceptance, the division (having failed to comply with the terms of Mr. S.'s unilateral conditional acceptance) is bound to the terms stated by Mr. S. Those terms, while inartfully expressed, may simply be summarized: the support obligation is unlawful, ineffective, discharged, and otherwise unenforceable.

The short answer to this argument is that Mr. S. lacks the authority to unilaterally set the terms by which this matter is resolved. Rather, resolution is governed by law. In this case, the issuance of a modified support order adding children to an existing order

²⁹ Case Referral Notice (October 22, 2010). Accompanying the Case Referral Notice are a copy of Mr. S.'s June 12, 2010, letter and what appears to be an internal division memorandum (undated, unaddressed, and unsigned) noting that the division's files do not include a copy of the May 21, 2010, modified order and that an administrative review was scheduled for July 1, 2010, and asking whether a formal hearing rather than administrative review was the appropriate action.

³⁰ Ex. 7, p. 1.

³¹ See Ex. 14, p. 7.

³² Ex. 5.

and establishing the support obligation for them is governed by AS 25.27.140, -.160, and .190 and by 15 AAC 125.100, -.105, -.118, -.321, and -.340. Nowhere in these provisions has the legislature or the division empowered parents to unilaterally set the terms on which they may be bound to a child support order. Mr. S. has neither asserted nor shown that the division has acted contrary to the applicable provisions of law.

In order to win his appeal, Mr. S. had the burden of proof to show that the division's order was erroneous.³³ Mr. S. has neither asserted nor shown that Z. and E. are not his children, that Ms. O. is not the primary custodian, that the amount of income attributed to him by the division is incorrect, or that the child support order was calculated incorrectly. Because Mr. S. has failed to show any error in the division's decision, his appeal must be denied.

IV. Conclusion

Modification to add children to the prior order was appropriate and Mr. S. did not show that the amount of income attributed to him or the division's calculation of the amount of support owed was in error. The modified order should therefore be affirmed.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated May 21, 2010, is **AFFIRMED**.

DATED: January 6, 2011.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

³³ 15 AAC 05.030(h).

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 25th day of January, 2011.

By: Signed _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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