

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

IN THE MATTER OF:)

C. E. R., JR.)

) OAH No. 10-0580-CSS

) CSSD No. 001163414

DECISION AND ORDER

On May 18, 2010, C. E. R., Jr., appealed an Amended Order Establishing Paternity that the Child Support Services Division (CSSD) issued in his case on October 11, 2010, regarding paternity of the child, C., who is 10 years of age. A hearing was calendared for and held on December 2, 2010. Mr. R. appeared by telephone; the custodian, B. E. D., could not be reached and did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's order is affirmed.

II. Facts

On November 27, 2009, CSSD served a Notice of Paternity and Financial Responsibility on Mr. R.² He requested paternity testing but refused to provide a DNA sample and later refused to participate in the formal hearing held after he appealed CSSD's paternity order.³ The appeal was remanded upon CSSD's request to again offer him paternity testing.⁴ Mr. R. provided a DNA sample on July 15, 2010.⁵ The genetic test results indicate Mr. R.' probability of paternity is 99.99%.⁶ On October 11, 2010, CSSD issued an Amended Order Establishing Paternity.⁷ Mr. R. appealed, asserting he did not provide a DNA sample on July 15, 2010, the test results are confusing and Ms. D. should pay for genetic testing.⁸

¹ A telephone call was placed to Ms. D.'s contact number in order to participate in the hearing, but she did not answer and a message could not be left for her because the voicemail box was full.

² Exh. 1.

³ Exhs. 2-5.

⁴ Exh. 6.

⁵ Exh. 11.

⁶ Exh. 7 at pg. 2.

⁷ Exh. 8.

⁸ Exhs. 9 & 10.

III. Discussion

Alaska Statute 25.20.050(d) states that a genetic test with probability of paternity results of 95% or higher creates a “presumption of parentage.” This presumption may be rebutted or challenged only by a showing of “clear and convincing evidence.”⁹ In accord with the statute, CSSD’s regulations state that if the genetic test results establish a presumption of parentage under AS 25.20.050(d), the agency will issue an administrative review decision that finds that the named individual is the child's biological father.¹⁰

The genetic test results conducted in this case show that Mr. R.’ probability of paternity of the obligee child C. is 99.99%. Mr. R. has not disputed these results. Rather, he claims that he did not provide a genetic sample on the date indicated on the “chain of custody” sheet.¹¹ Indeed, “chain of custody” document that is designed to track the DNA sample shows he signed it on or about September 13, 2010, and wrote under his signature “not correct date D.N.A. taken.”¹²

CSSD was asked to provide evidence after the hearing and substantiate the chain of custody of Mr. R.’ genetic sample. On December 13, 2010, M. M. of CSSD’s paternity establishment section filed an affidavit that explains what transpired in this case. To summarize, Ms. M.’s affidavit states that Mr. R.’ DNA sample was taken on July 15, 2010, as evidenced by the copy of the envelope he and the collector signed on that date.¹³ The Laboratory Corporation of America (LabCorp) received the sample on July 20, 2010, but the “chain of custody” document was not with it, so the lab requested another one. Mr. R. and the person who collected the sample signed this replacement document on September 13, 2010, and it was returned to LabCorp.¹⁴

Based on the record as a whole, Mr. R. has not submitted evidence that rises to the level of “clear and convincing” evidence such that it would be sufficient to rebut the presumption of parentage created by the 99.99% genetic test results. Mr. R. provided a DNA sample on July 15,

⁹ *Id.*

¹⁰ 15 AAC 125.222(b).

¹¹ *See* Exh. 12 at pg. 2. This “chain of custody” document was identified as an exhibit and attached to an affidavit submitted after the hearing by M. M., in the paternity establishment section, and received on December 13, 2010. The document did not have an exhibit number on it, so the administrative law judge assigned Exh. 12 to this two-page document and marked it as such for purposes of identification in this decision.

¹² Exh. 12 at pg. 2.

¹³ Exh. 11.

2010, and signed the envelope into which it was placed. The sample was transmitted to LabCorp, where it was received on July 20, 2010. The chain of custody for Mr. R.' sample was established when he and the person who collected it signed the appropriate form. The subsequent genetic tests establish Mr. R.' paternity of the child, C.

IV. Conclusion

Mr. R. has not met his burden of proving CSSD's Amended Order Establishing Paternity was issued in error. Genetic testing of the DNA sample he provided indicates that his probability of paternity of C. is 99.99%, so the order should be affirmed.

V. Order

- CSSD's October 11, 2010, Amended Order Establishing Paternity is affirmed.

DATED this 3rd day of February, 2011.

By: Signed
Kay L. Howard
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 22nd day of February, 2011.

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

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

¹⁴ Exh. 12 at pg. 2.