

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

IN THE MATTER OF)	
)	
T J. C)	OAH No. 11-0033-CSS
<hr style="width:35%; margin-left:0"/>)	CSSD No. 001165323

DECISION AND ORDER

I. Introduction

This case is T J. C’s appeal of an order issued by the Alaska Child Support Services Division (Division). That order established her child support obligation for the child, B. On February 9, 2011, a formal hearing was held on Ms. C’s appeal.¹ The child’s father, L L. K, participated. Ms. C also participated. Ms. C was represented by her attorney, W A. Z. Erinn Brian, Child Support Services Specialist, represented the Child Support Services Division (Division). The Facility A was notified of the hearing, but responded by telephone prior to the hearing, explaining that it would not be participating. The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, the administrative law judge concludes that the Division’s Amended Administrative Child and Medical Support Order should be vacated. The Division lacks the authority to issue an administrative order establishing child support in this case because such an order would modify an existing Maryland court order. The Maryland order reserved jurisdiction on Ms. C’s child support obligation for B, effectively setting \$0 in monthly ongoing child support.

II. Facts

B was born in 1994. There is no dispute T J. C is B’s biological mother. Ms. C was 15 years old when B was conceived. L L. K, the biological father, was 23 years old when B was born, but he had medical problems at that time and is now disabled.²

Prior to B’s birth, Mr. K, Ms. C and paternal grandmother, Z W. K, agreed that Ms. K would adopt the child. Ms. C lived in Pennsylvania at that time and Ms. K lived in Maryland. Ms. K began the adoption process before B was born. Ms. K contacted Lutheran Social Services of the National Capitol Area for an adoptive home study, which was completed and approved on

¹ The hearing was held under Alaska Statute 25.27.170.

² Recording of Hearing-Testimony of Mr. K & Ms. C.

June 20, 1994.³

Ms. C explained that when B was born she originally changed her mind about the adoption and attempted to raise him on her own without any support from her family, Mr. K, or his family. After a few months of struggling to support herself and her child, Ms. C realized that this was not the life that she wanted for her son, and contacted Ms. K to take B.⁴

Ms. K came and got B. Ms. C was sixteen years old at that time and no longer living with her parents. Besides Ms. K and Ms. C, the only other person present when Ms. K picked up B was a young woman friend of Ms. C. Ms. C's recollection of that meeting was that Ms. K had her sign paperwork that terminated Ms. C's parental rights and assured Ms. C that Ms. K would adopt B. Ms. C had always assumed that the adoption went through without any problems because she never was contacted by anyone regarding B until she received a child support order from CSSD to provide income information in February of 2010.⁵

By February of 2010, Ms. C was married and living with her four young children and her husband in City A, Alaska. She and her husband both work, but the family's household finances are strained. Their household income is low. One of their children has special needs, which creates high uncovered medical expenses.⁶

The Division issued an Administrative Child and Medical Support Order on October 12, 2010.⁷ The Division issued this order because it received a petition under the Uniform Interstate Family Support Act (UIFSA) from the State of Pennsylvania dated January 6, 2010.⁸ Ms. C requested an administrative review.⁹

The Division issued an Amended Administrative Child and Medical Support Order on December 30, 2010. In this order, the Division set Ms. C's ongoing child support at \$350 per month. The order also set monthly arrears going back to February of 2010.¹⁰

Ms. C requested a formal hearing.¹¹ With her request, Ms. C filed additional information about the adoption proceedings that were initiated before she gave her child to Ms. K.¹²

³ The pre - adoption reports are found at exhibit 3, page 3-11.

⁴ Recording of Hearing-Testimony of Ms. C.

⁵ Recording of Hearing-Testimony of Ms. C.

⁶ Ms. C and her husband's 2010 tax return is found at Ex. B. Recording of Hearing-Testimony of Ms. C.

⁷ Exhibit 4.

⁸ Exhibit 1.

⁹ Exhibit 6.

¹⁰ Exhibit 6.

¹¹ Exhibit 7.

¹² Exhibit 7.

In addition to the Lutheran Social Services adoptive home study that was completed and approved on June 20, 1994, Ms. C was able to locate and provide an adoptive home study annual review from Lutheran Social Services, which was dated March 18, 1996. This review indicates that B was living with Ms. K and that Ms. K was in the process of petitioning the court for legal custody.¹³

Ms. C was also able to locate a copy of that custody order, in Circuit Court for Montgomery County Maryland case number Civil No. 000000, titled *Z W. K, Plaintiff, v. T K N and L L. K, Defendants*. This order was issued after an order of default was issued against Ms. C under her maiden name, N. Ms. C testified at the hearing that she did not remember having received any notice of the custody action. The Maryland custody order awards sole legal custody to Ms. K; allows Mr. K and Ms. C only reasonable visitation in the presence of Ms. K; and restricts all visitation to being within the state of Maryland. The custody order also includes the following language regarding child support:

ORDERED, that each of the Defendant's obligation to contribute to the support and maintenance of the minor child of the parties be reserved.¹⁴

In the report and recommendations of the Domestic Relations Master, which preceded the custody order, the Master explained his recommendation that the court reserve the issue of parents' child support obligation as follows:

The issue of lack of the Defendant's obligation to contribute to the support and maintenance of the minor child is reserved; in view of the fact that there was no evidence of either defendant's ability to pay child support.¹⁵

At the hearing, the Division provided a copy of a court record search for the Erie County Court of Common Pleas, which showed no adoption records for Ms. C under her maiden name or for B in that Pennsylvania county court. This is not surprising as Ms. K and B lived in Maryland at the time the planned adoption was to have taken place. However, it appears that Ms. K sought only the custody and child support orders through the Maryland court and never initiated adoption proceedings in court.

At the hearing Mr. K explained that the UIFSA petition had been initiated because of his

¹³ Exhibit 3, page 10 & 11.

¹⁴ Exhibit A - Custody Order at page 2, Circuit Court for Montgomery County Maryland case number Civil No. 000000.

¹⁵ Exhibit A – Domestic Relations Master Report and Recommendations at page 3, Circuit Court for Montgomery County Maryland case number Civil No. 000000.

application for public assistance for B. Mr. K said that he has a very limited income and receives social security disability payments, so he applied for assistance when B came to live with him for several months when his mother, Ms. K was hospitalized.¹⁶

Mr. K stated that when he first applied for public assistance for help supporting B in 2003, the agency he was working with decided not to pursue child support against Ms. C. B returned to live with Ms. K after she was released from the hospital. Then he went back to live with Mr. K again for the 2009-2010 school year, but B has returned to live with Ms. K for the current (2010-2011) school year.¹⁷

Mr. K testified that he did not want to get child support from Ms. C, but needed public assistance to help support his son. Mr. K did not remember ever having seen the court order for custody issued by the state of Maryland. His only knowledge of custody and adoption proceedings was what he remembered being told by his mother and also by his sister when his mother became ill. It was his understanding that his mother had only sought temporary custody after the adoption plans that were initiated before B was born did not go through. Mr. K's understanding was that the adoption proceedings did not go through because Ms. C decided to keep the child.¹⁸

III. Discussion

Ms. C argued that her child support order should be vacated or should be lower than the amount set by the Division. Ms. C advanced several arguments in support of her position, including estoppel. The only issue that needs to be addressed, however, is the Division's authority to issue an administrative order establishing Ms. C's child support obligation.

The custody order issued by the Maryland court in 1996 includes a child support order. In that child support order, the court ordered that the obligations of Ms. C and Mr. K to contribute to B's support are reserved. The Maryland court reserved, that is, held or retained, jurisdiction over the parents' child support obligation, and effectively set ongoing child support for each parent at \$0 per month, pending modification of that order. The court's decision to maintain jurisdiction over child support is consistent with the court's retention of jurisdiction over custody. The court's decision to effectively set ongoing child support at \$0 per month is

¹⁶ Recording of Hearing-Testimony of Mr. K.

¹⁷ Recording of Hearing-Testimony of Mr. K.

¹⁸ Recording of Hearing-Testimony of Mr. K.

consistent with Ms. C's age and employment status at the time the order was issued and Mr. K's financial situation at that time. There is no evidence that the court's custody or child support orders have ever been modified, or that these orders have ever been registered in another state.

The Division lacks the statutory jurisdiction to administratively create a child support order independent and different from another state's court child support order that effectively modifies that court order.¹⁹

This is a UIFSA case.²⁰ UIFSA allows only one effective child support order to exist at a time. UIFSA accomplishes this by giving the state that issues a child support order continuing and exclusive jurisdiction over a child support order the state initiates for as long as the state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued. The law of the initiating state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.²¹

While it appears that neither of the parents or Ms. K currently lives in Maryland, the Maryland custody order has not been modified to give custody to Mr. K, to make Mr. K the obligee or change Ms. C's ongoing support obligation for B. Ongoing child support should be based on the court custody order rather than on the custody arrangement.²² In this case, the Maryland court custody orders provided that Ms. K was to have primary custody during the period that B was living with Mr. K. For several months now B has been back living with Ms. K. There is no evidence that Ms. K has applied for public assistance. There is no evidence that there is any plan for B to move back with his father, Mr. K, before he becomes an adult next year.

If the Maryland court's custody and child support order is to be modified, it can only be done prospectively and it cannot be done through an administrative establishment order initiated by the Division.²³

IV. CHILD SUPPORT ORDER

The Amended Administrative Child and Medical Support Order issued on December 30, 2010 is vacated. Any child support collected from Ms. C and transmitted to the State of

¹⁹ UIFSA was adopted in Alaska under AS 25.25.101-903.

²⁰ *State, Dept. of Revenue, Child Support Enforcement Div. v. Dunning*, 907 P.2d 1, 7 (Alaska 1995).

²¹ *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 188-89 (Alaska 1999).

²² *Bennett v. Bennett*, 6 P.3d 724, 727 (Alaska 2000) citing *Turinsky v. Long*, 910 P.2d 590, 595 (Alaska 1996).

²³ Alaska Civil Rule 90.3(h) & AS 25.25.206(a).

Pennsylvania should be transmitted back to the Alaska Child Support Services Division.

DATED this 22nd day of February, 2011.

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 13th day of March, 2011.

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

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