

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

IN THE MATTER OF:)	
)	OAH No. 11-0308-CSS
J L. L)	CSSD No. 001173115
_____)	

DECISION AND ORDER

I. Introduction

The named custodian, M R. S, has appealed an order CSSD issued on July 8, 2011, vacating J L. L's child support obligation on behalf of the minor children, J, 5; and X, 4. The mother of the children is B M. S.

The formal hearing was held on August 25, 2011. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Vacate Administrative Child Support and Medical Support Order is affirmed. Mr. L and Ms. S are an intact family with J and X so Mr. L does not have an obligation to support the children in a child support action administered by CSSD.

II. Facts

A. Procedural History

Mr. S submitted an application for child support services on January 14, 2011, naming Mr. L as the noncustodial parent.¹ On March 15, 2011, CSSD issued an Administrative Child Support and Medical Support Order that directed Mr. L to pay child support of \$351 per month for J and X beginning in January 2011.² Mr. L requested an administrative review and submitted additional information.³ On July 8, 2011, CSSD issued a Vacate Administrative Child and Medical Support Order that eliminated Mr. L's child support case on the basis that he and Ms. S constitute an intact family with the children.⁴ Mr. S appealed on August 4, 2011.⁵

¹ Exh. 1.
² Exh. 2.
³ Exhs. 3-4.
⁴ Exh. 5.
⁵ Exh. 6.

B. Material Facts

Based on the record as a whole, the material facts are established by a preponderance of the evidence based on the testimony of the parties and the documents submitted into evidence.

Mr. L and Ms. S have two children, J and X. Ms. S and the children have lived with her mother and stepfather – Mr. S – for about three years. Mr. L has also lived there in the past, but he is currently staying with friends and family members and only stops by the house occasionally. They used to pay rent to Ms. S’s parents but stopped in the past, apparently because Mr. L is not working and because of the stress of living there. According to Mr. S, Mr. L is not welcome in the home until he finds employment and provides better support to his children. Ms. S is upset that her stepfather initiated a child support case against her fiancé, but her housing options are limited so she remains there with the children.

Mr. L is currently looking for work. Ms. S and Mr. L receive assistance from the State to support their family. They are on a food stamp grant together with J and X and Ms. S’s other child from a different relationship. Ms. S and Mr. L are engaged and she considers them to be an intact family even though Mr. L is not able to live with them full-time.

III. Discussion

Mr. S filed the appeal because he does not want CSSD’s case against Mr. L vacated. CSSD’s position is that Mr. L is a custodial parent and that he and Ms. S and their children constitute an intact family. Both Ms. S and Mr. L agree with CSSD.

A parent is obligated both by statute and at common law to support his or her children.⁶ In cases established by CSSD, the agency collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).⁷

Mr. S applied for child support services in January 2011. CSED initially charged Mr. L with support beginning in January, but the agency is now of the opinion that Mr. S, even though he owns the home where Ms. S and the children are staying, is not a custodian in relation to the children and thus he is not entitled to have support collected by CSSD. This is in addition to CSSD’s position that Mr. L is not liable for support because he and Ms. S are an intact family.

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ 15 AAC 125.105(a)(1)-(2).

CSSD is correct. It is not necessary to address the issue whether Mr. S is entitled to ask CSSD to collect support on behalf of J and X. This appeal is resolved on the central question whether Mr. L is obligated to pay support on the children's behalf through CSSD. Because he and Mr. S are engaged and consider themselves and the children to be an intact family, he is not liable for paying support through CSSD. This appeal essentially involves a family dispute and cannot be resolved through the agency.

IV. Conclusion

Mr. S did not meet his burden of proving by a preponderance of the evidence that CSSD's Vacate Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. L is not liable for paying support through CSSD because he and Ms. S and the children are considered an intact family. CSSD's order vacating his child support order should be affirmed.

V. Child Support Order

- The Vacate Administrative Child Support and Medical Support Order dated July 8, 2011, is affirmed;
- Mr. L is not liable for paying support for J and X through CSSD at this time.

DATED this 14th day of September, 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 3rd day of October, 2011.

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

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