

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

IN THE MATTER OF:)

J A. B)

OAH No. 11-0391-CSS

CSSD No. 001167465

**DECISION AND ORDER GRANTING
MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

On October 13, 2011, CSSD filed a Motion for Summary Adjudication in this child support case. A hearing was convened on October 31, 2011, at which Mr. B appeared by telephone. The custodian, J S-T, could not be reached and did not participate. A voicemail message left for her has not been returned. Andrew Rawls, Child Support Specialist, represented CSSD. The obligee children are M, age 5, and X, age 3.

Based on the record as a whole and after due deliberation, the Motion for Summary Adjudication is granted. CSSD's Administrative Review Decision dated September 23, 2011, is affirmed.

II. Facts

Ms. S-T first applied for child support services in April 2010.¹ She subsequently withdrew the application and reapplied on April 1, 2011.² On May 5, 2011, CSSD issued an Administrative Child Support and Medical Support Order for Mr. B to pay \$50 per month, effective April 1, 2011.³ He requested an administrative review and requested paternity testing.⁴ CSSD denied the request because Mr. B had signed an affidavit of paternity.⁵ Ms. S-T withdrew from services a second time on June 21, 2011.⁶ On September 23, 2011, CSSD issued an

1 Exh. 1.
2 Exhs. 2-3.
3 Exh. 5.
4 Exhs. 6-7.
5 Exh. 8.
6 Exh. 9.

Administrative Review Decision affirming its earlier administrative order.⁷ Mr. B appealed on October 5, 2011,⁸ after which CSSD filed a Motion for Summary Adjudication.

III. Discussion

CSSD's Motion for Summary Adjudication argues that there are no material issues of fact necessitating a hearing, and the agency is entitled to judgment as a matter of law. The motion states that Mr. B's child support has been set at the minimum amount pursuant to Civil Rule 90.3, based on his incarceration. Mr. B wants to get paternity testing but CSSD asserts it is not available to him at the administrative level and instead he must submit his request to the court.

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁹ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If undisputed material facts establish that one side or the other must prevail, the evidentiary hearing is not required.¹⁰

There is no disagreement about the facts relevant to resolution of this case. Mr. B is incarcerated and does not have the ability to get out into the work force and earn an income. As a result of his lack of income, CSSD set his child support at \$50 per month effective April 1, 2011.¹¹ A child support order of \$50 per month is the minimum amount allowed under Alaska law, and it may not be reduced below that amount.¹² The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which has stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but that will not excuse the child support obligation.¹³ Thus, Mr. B's child support amount cannot be lowered below \$50 per month.

Mr. B's primary request is for DNA tests. CSSD denied his petition for genetic testing for the reason that he has already signed an affidavit of paternity. According to Alaska Statute

⁷ Exh. 10.

⁸ Exh. 6.

⁹ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

¹⁰ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

¹¹ Exh. 5.

¹² Civil Rule 90.3(c)(1)(B).

¹³ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

(AS) 25.20.050(a)(3), “a child born out of wedlock is legitimated and considered the heir of the putative parent when, at any time after July 1, 1997, the putative father and the mother both sign a form for acknowledging paternity” prepared by the Bureau of Vital Statistics. According to CSSD, Mr. B has signed such affidavits regarding M and X and the agency is thus unable to disestablish his paternity of the children. CSSD correctly stated that Mr. B will have to file a petition in court if he wants to pursue disestablishment of his paternity of M and X.

IV. Conclusion

There are no material facts in dispute that can be resolved at a formal hearing, so CSSD is entitled to summary judgment as a matter of law. Thus, in the absence of material issues of fact, CSSD’s Motion for Summary Adjudication should be granted, and Mr. B’s appeal should be dismissed.

V. Order

- CSSD’s October 13, 2011, Motion for Summary Adjudication is GRANTED;
- Mr. B’s appeal is dismissed;
- CSSD’s Administrative Review Decision issued on September 23, 2011, is affirmed.

DATED this 21st day of November, 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 9th day of December, 2011.

By: Signed _____
Signature
Christopher Kennedy _____
Name
Deputy Chief Administrative Law Judge _____
Title

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