

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

IN THE MATTER OF:	)	OAH No. 11-0422-CSS
D A. H	)	CSSD No. 001061092
_____	)	

**ORDER GRANTING SUMMARY ADJUDICATION**

On November 9, 2011, the Child Support Services Division (Division) filed a Motion for Summary Adjudication in this appeal, alleging that no material facts are in issue and that it is entitled to judgment as a matter of law. D A. H is the obligor in this case, and E G is the custodial parent.

On November 15, 2011, a hearing was held to consider Division's motion. Mr. H participated. Ms. G did not participate.<sup>1</sup> Andrew Rawls, Child Support Services Specialist, represented the Division.

This case is Mr. H's appeal of a denial of his request for a downward modification of his child support order for his child L. The Division issued a Modified Child and Medical Support order on October 14, 2008, which set Mr. H's ongoing child support obligation at the minimum of \$50 per month based on his incarceration and lack of income.

Mr. H filed a request for a modification of the 2008 order in June of 2011 and a petition for modification was issued on July 26, 2011. This petition was denied in a Decision on Request for Modification Review that was issued by the Division August 26, 2011.

At the hearing on his appeal of this decision, Mr. H argued that Oregon child support laws do not require child support to be paid during a period of incarceration should apply to him because he is in the custody of the state of Oregon not Alaska and because both Oregon and Alaska are under the jurisdiction of the Federal Ninth Circuit Court of Appeals.<sup>2</sup> In its motion the Division argued that Mr. H's child support could not be set lower than the minimum of \$50

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<sup>1</sup> Ms. G did not appear or provide a phone number to call for the hearing as instructed on the notice sent to her address of record. There was no answer at her phone number of record at the time set for the hearing.

<sup>2</sup> See Mr. H Motion for Modification at Ex.2.

per month. At the hearing, Mr. H also explained that he does not wish to evade his duty to support his child. Mr. H explained that he just wants to suspend his child support obligation he can start earning an income after he is released<sup>3</sup>

When one party asks for summary adjudication, a party wishing to have an evidentiary hearing must show that there is a need to have a hearing to prove issues of disputed fact regarding the action being appealed.<sup>4</sup> The issues raised by Mr. H do not preclude summary adjudication. The Division correctly set Mr. H's support to the minimum amount permitted under Alaska law, which is \$50 per month even if the obligor is serving an extended sentence of incarceration.<sup>5</sup> The law requires that child support be set at no less than \$50 per month. The Division could not set Mr. H's ongoing child support obligation below this amount and correctly denied the petition for modification.

Mr. H child support order for L was established in Alaska, not Oregon. Under Alaska Statute 25.27.140(a) the Division has the authority to establish a child support order if no support order has previously been established for the child. Alaska has adopted the Uniform Interstate Family Support Act (UIFSA). 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 that 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.<sup>6</sup> Alaska law rather than Oregon law governs a petition for modification of this child support order.

Since Oregon and Alaska are within the jurisdiction of the Federal Ninth Circuit Court of Appeals, the courts and tribunals of both those states look to the decision of that court for

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<sup>3</sup> Recording of Hearing-Testimony of Mr. H.

<sup>4</sup> *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

<sup>5</sup> *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

<sup>6</sup> *State, Child Support Enforcement Div. v. Bromley*, 987 P.2d 183, 188-89 (Alaska 1999).

established precedent on issues of federal law. The laws of each state, however, govern child support orders that were established and are being enforced in that state. There is no requirement that child support orders be controlled by the laws of the state where the obligor resides when the obligor resides within the jurisdiction of the same federal circuit court of appeals as the state that has jurisdiction of the child support order.

The Division's Motion for Summary Adjudication is GRANTED.

**Child Support Order**

The Division's Decision on Request for Modification Review that was issued on August 26, 2011 is affirmed.

DATED this 16<sup>th</sup> day of November, 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 5<sup>th</sup> day of December, 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.]