

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

In the Matter of:)

J D. B)

OAH No. 13-0624-CSS

CSSD Nos. 001158489

001190907

001165660

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

I. Introduction

On May 17, 2013, CSSD filed a Motion for Summary Adjudication. A hearing was convened on June 12, 2013. The telephone number of record for the custodial parent, D F. S, was no longer in working order. The obligor, Mr. B, had been incarcerated when this matter commenced, but is now released. He provided a mailing address but no current telephone number. Christie Vaden, Child Support Specialist, represented CSSD. The orders appealed are an order of paternity and an April 2, 2013 Modified Administrative Child Support and Medical Support Order adding an additional child, H, to Mr. B's existing support order. When viewed in a light most favorable to Mr. B, the evidence supports a finding that CSSD is entitled to summary adjudication. Therefore, CSSD's May 17, 2013 Motion for Summary Adjudication is granted and the April 2, 2013 Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

The child at issue, H, has been taken into state custody. Genetic testing established a 99.99% probability that Mr. B is H's biological father.¹ CSSD issued an order of paternity establishing Mr. B as the father.² Mr. B appealed the order of paternity. The appeal contained only one written statement that reads, "none to say to you?!"³ No other basis for appeal was provided.

¹ Exhibit 3.

² Exhibit 4.

³ Exhibit 5.

Having issued its order establishing paternity, CSSD noticed the modification of an existing support order to add H as an obligee child.⁴ On April 15, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order adding H and setting Mr. B's support at the statutory minimum, \$50.⁵

Mr. B submitted his request for appeal and stated as his reason for the appeal that he was going to be released, and provided a new address to be used upon his release.⁶

III. Discussion

CSSD's Motion for Summary Adjudication argues that CSSD should be granted summary adjudication because there are no material issues of fact necessitating a hearing, and the agency is entitled to judgment as a matter of law.

In an administrative proceeding, summary adjudication is the equivalent of summary judgment in a court proceeding.⁷ It is a means of resolving an appeal 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.⁸

Mr. B submitted this request for appeal but failed to articulate the reason for his appeal. As the moving party it is the division's burden to establish that it is entitled to summary adjudication as a matter of law.

When the record is reviewed in a light most favorable to the nonmoving party, Mr. B, it could be that he was asking that his support obligation be reviewed upon his release. If he is asking for a review of his support obligation, then the proper procedural avenue is to petition for modification. However, it is just as likely that Mr. B was using the Request for Appeal forms to communicate with the division and not request an appeal. Because Mr. B did not participate in the hearing, his reason for submitting the appeal form could not be developed, and without more, summary adjudication is appropriate in this instance.

⁴ Exhibit 6.

⁵ Alaska Rule of Civil Procedure. 90.3.

⁶ Exhibit 10.

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

⁸ 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).

IV. Conclusion

The division has established that there are no material facts in dispute supporting a formal hearing. CSSD is entitled to summary judgment as a matter of law.

V. Order

Summary Adjudication is GRANTED; the April 2, 2013 Modified Administrative Child Support and Medical Support Order is affirmed and remains in full force and effect.

DATED this 18th day of June, 2013.

Signed

Rebecca L. Pauli
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 8th day of July, 2013.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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