

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

In the matter of:)	
)	OAH No. 14-0615-CSS
G J. T, SR.)	CSSD No. 001116839
_____)	

DECISION AND ORDER

I. INTRODUCTION

Obligor G J. T, Sr. challenged the Child Support Services Division’s (CSSD’s) February 6, 2014 Modified Administrative Child Support and Medical Support Order. This order reduced Mr. T’s monthly child support payment for three children from \$1,545 to \$1,254 per month. He appealed because he believes CSSD overstated his income. The obligee children are G Jr. (age 13), F (age 11), and W (age 8). The custodian is J K.

This matter started out as a straightforward appeal of a Modified Administrative Child Support and Medical Support Order. However, when it was discovered that Mr. T and Ms. K were married in 2005, after Mr. T’s support obligation was established in 2002, this matter took a procedural turn. By regulation (15 AAC 125.870(f)) Mr. T’s and Ms. K’s marriage terminated the 2002 order. Because it was terminated, any subsequent modification of that order must be vacated, rendering Mr. T’s appeal moot.

II. FACTS AND PROCEDURAL HISTORY

This matter arises out of G J. T Sr.’s challenge to the February 6, 2014 Modified Administrative Child Support and Medical Support Order, but it was resolved in 2005 when the parties married. The following facts are undisputed:

- On December 30, 2002, the Child Support Services Division (CSSD) issued an Administrative Child Support and Medical Support Order establishing Mr. T’s monthly child support obligation for one child, G Jr., at \$673.
- On January 7, 2003, Ms. K withdrew from CSSD services. The withdrawal from services did not terminate or vacate the December 2002 support order. Mr. T was still obligated to pay monthly child support at the established rate.
- In April 2004, CSSD closed its file. As with Ms. K’s withdrawal from service, CSSD’s closure did not relieve Mr. T of his obligation to pay support under the December 2002 support order.

- On February 5, 2005, Ms. K and Mr. T were married. The marriage automatically terminated the December 2002 support order.
- Ms. K and Mr. T had two more children.¹
- On July 16, 2007, CSSD was notified that Ms. K and three dependents were receiving public assistance. This prompted CSSD to reopen its case.
- CSSD did not treat the December 2002 order as terminated. It sought to add F and W to G Jr.'s support order.
- On February 4, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order, believing it had established a support obligation for F and W. This order set ongoing support for the three children at the rate of \$991 per month effective July 2007 and suspended October 2007 because Mr. T had moved back into the family home.
- On February 3, 2012, the Ts divorced. The court abated child support to CSSD.
- CSSD received a copy of the divorce decree on September 27, 2012, prompting CSSD to undertake a modification review.
- On November 9, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order intending to modify the February 4, 2008 support order. The 2012 order increased Mr. T's monthly support for three children from \$991 to \$1,545 effective November 1, 2012.
- On February 6, 2014, CSSD issued another Modified Administrative Child Support and Medical Support Order intending to modify the November 9, 2012 support order. This order reduced Mr. T's monthly child support obligation for three children from \$1,545 to \$1,254 per month effective December 1, 2013.
- Mr. T appealed the February 6, 2014 order arguing that the amount of income used to calculate child support was overstated because he was unemployed and did not receive a permanent fund dividend.
- While preparing CSSD prepared to address Mr. T's appeal CSSD received a copy of the Ts' divorce decree and realized they had been married in 2005.

¹ F was born in 2003 and W was born in 2006.
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III. DISCUSSION

A parent is obligated both by statute and at common law to support his or her children.² This obligation exists with or without an administrative order. When, as here, there has been an administrative support order, the obligor is required to pay support under that order regardless of CSSD's involvement. However, to be enforceable by CSSD, the administrative order must be valid.

The process of establishing a valid support order begins with a request for CSSD's services. CSSD will then request financial information from both parents.³ Upon receipt of that information, or after the time period for a response has expired, CSSD may initiate a child support action by serving the non-custodial parent with a Notice and Finding of Financial Responsibility.⁴ A Notice and Finding of Financial Responsibility establishes an ongoing support obligation.⁵ It also establishes any arrears for the time period prior to the effective date of the notice and finding of financial responsibility.⁶ The Notice and Finding of Financial Responsibility is statutorily prescribed to contain the following:

- (b) Except as provided in (c) of this section, the notice and finding of financial responsibility served under (a) of this section must state
 - (1) the sum or periodic payments for which the alleged obligor is found to be responsible under this chapter;
 - (2) the name of the alleged obligee and the obligee's custodian;
 - (3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because
 - (A) no duty of support is owed; or
 - (B) the amount of support found to be owed is incorrect;
 - (4) that, if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property and income of the person will be subject to execution under AS 25.27.062 and 25-

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

³ 15 AAC 125.100(a).

⁴ AS 25.27.160; 15 AAC 125.100(b).

⁵ 15 AAC 125.100(c).

⁶ 15 AAC 125.105(a).

27.230 – 25.27.270 in the amounts stated in the finding without further notice or hearing.^{17]}

If the Notice and Finding of Financial Responsibility contains the required information, an administrative order of support will set the amount of child support until the obligor is no longer legally responsible for the support of the child and the order terminates. Typically this occurs when a child turns 18 or is adopted. Here, however, the December 2002 support order establishing support for G Jr. terminated in 2005 as a matter of law when the parents married.⁸

Once an order has terminated because of marriage, if CSSD's services are requested, CSSD must initiate a new administrative action to establish an administrative support order by serving the obligor with a new Notice and Finding of Financial Responsibility.⁹ Therefore, the subsequent orders are valid and enforceable only if they were preceded with a valid Notice and Finding of Financial Responsibility issued after February 5, 2005.

The only post-marriage order that could possibly be considered an establishment order was the February 2008 Order establishing support for F and W. An "Add-a-Kid" modification is two separate actions combined for administrative convenience: an establishment action for the added child or children and a modification of a prior order. If Mr. T was served with a Notice of Finding and Financial Responsibility for F and W, then any subsequent modification of the 2008 order would only be effective as to the two girls, but not G Jr. However, the February 4, 2008 Modified Administrative and Medical Support Order does not meet the third and fourth requirements for a Notice of Finding and Financial Responsibility and all orders issued after February 5, 2005 should be vacated.¹⁰

IV. CONCLUSION

The December 2002 Administrative Child Support and Medical Support Order terminated as a matter of law when Mr. T and Ms. K married on February 5, 2005. When CSSD's services were requested in 2008, it was required to issue a Notice and Finding of

⁷ AS 25.27.160(b). Subsection (c) provides for different requirements when CSSD is establishing only a duty of medical support.

⁸ 15 AAC 125.870(f).

⁹ 15 AAC 125.870(f)(1); AS 25.27.160.

¹⁰ *In re D A. H.*, OAH No. 12-0134 CSS (Commissioner Dept. of Revenue 2012). CSSD, in its post hearing briefing, agreed that the February 2008 "add-a-kind" modification did not contain the information required for a valid Notice and Finding of Financial Responsibility.

Financial Responsibility.¹¹ It did not, so any order issued after February 5, 2005 is vacated¹² and Mr. T's appeal is moot.

V. ORDER

- The Modified Administrative Child Support and Medical Support Order dated February 8, 2008 is VACATED.
- The Modified Administrative Child Support and Medical Support Order dated November 9, 2012 is VACATED.
- The Modified Administrative Child Support and Medical Support Order dated February 6, 2014 is VACATED.

DATED this 7th day of July, 2014.

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 25th day of July, 2014.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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

¹¹ 15 AAC 125.870(f).

¹² *In re D A. H.*, OAH No. 12 – 0134 – CSS (Commissioner Dept. of Revenue 2012).