

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

In the Matter of	)	
	)	
S B. C	)	OAH No. 15-1367-CSS
<hr style="width:45%; margin-left:0"/>	)	Agency No. 001207444

**ORDER GRANTING CSSD’S MOTION FOR SUMMARY ADJUDICATION**

**I. Introduction**

CSSD seeks summary adjudication/dismissal of S C’s appeal because, as a matter of law, this tribunal does not have the jurisdiction to grant the relief he seeks: disestablishment of paternity. Superior court is the proper forum for this proceeding. Because the relief sought is unavailable in this tribunal, and Mr. C having failed to oppose CSSD’s motion to dismiss his appeal on that ground, CSSD’s motion to dismiss Mr. C’s appeal is granted.

**II. Factual Background**

This case involves S C’s child support obligation for one-year-old P B. P was born on 00/00/14.<sup>1</sup> Records maintained by the State of Alaska Bureau of Vital Statistics reflect that, on or about September 10, 2014, Mr. C signed an affidavit acknowledging paternity.<sup>2</sup>

When P became a recipient of public assistance benefits, the Child Support Services Division (CSSD) initiated child support proceedings against Mr. C because he had signed an Affidavit of Voluntary Paternity.<sup>3</sup> On July 8, 2015, CSSD issued an Administrative Child Support and Medical Support Order, setting Mr. C’s child support obligation for P at \$50.00 per month, the statutory minimum amount.<sup>4</sup> CSSD served Mr. C with that Order on July 18, 2015.<sup>5</sup>

On July 19, 2015, Mr. C signed a Request for Administrative Review Hearing, checking a box on the hearing request form indicating he was “requesting genetic testing.”<sup>6</sup> In response, CSSD sent Mr. C a document labeled “Denial of Petition for Genetic Testing,” explaining that, “once an Affidavit of Voluntary Paternity is submitted to the Bureau of Vital Statistics, CSSD is unable to disestablish paternity.”<sup>7</sup> Rather, the Denial explained, paternity can only be disestablished through a court action.<sup>8</sup>

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<sup>1</sup> Ex. 10.  
<sup>2</sup> Ex. 10.  
<sup>3</sup> CSSD’s 11/16/15 Submission to Record.  
<sup>4</sup> Ex. 4.  
<sup>5</sup> Ex. 4, pp. 12, 14.  
<sup>6</sup> Ex. 6.  
<sup>7</sup> Ex. 5.  
<sup>8</sup> Ex. 5.

On September 2, 2015, CSSD issued an Administrative Review Decision affirming the July 8, 2015 Administrative Child Support and Medical Support Order.<sup>9</sup> On October 8, 2015, Mr. C filed an appeal of this Decision, writing: “I am appealing this because no DNA test has been done, which is my right.”<sup>10</sup>

After Mr. C’s appeal was referred to the Office of Administrative Hearings, CSSD filed a Motion to Dismiss, arguing that Mr. C’s appeal must fail as a matter of law because only the court, not CSSD, could legally disestablish paternity in this case.

Upon review of CSSD’s motion and the underlying agency record contained in the hearing exhibits, the Administrative Law Judge determined that CSSD’s motion was most appropriately characterized as a motion for summary adjudication.<sup>11</sup> A briefing order issued November 13 directed CSSD to ensure that the motion and supporting materials had been filed on Mr. C, and set a time frame for Mr. C to file any response to the motion. No response has been received from Mr. C and the motion is now ripe. For the reasons that follow, CSSD’s motion is well-taken and this matter is dismissed.

### **III. Discussion**

Summary adjudication is appropriate “if a genuine dispute does not exist between the parties on an issue of material fact.”<sup>12</sup> Here, summary adjudication is appropriate because, as a matter of law based on the undisputed factual record, CSSD lacks jurisdiction to grant the relief requested.

As CSSD’s motion and underlying documentation correctly note, CSSD is not legally empowered to disestablish paternity under these circumstances. AS 25.20.050(a)(3) provides that “a child born out of wedlock is legitimized and considered the heir of the putative parent when ... the putative father and the mother both sign a form for acknowledging paternity under AS 18.50.165.” CSSD’s exhibit 10 reflects that both Mr. C and Ms. H signed the AS 18.50.165 acknowledgement.<sup>13</sup>

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<sup>9</sup> Ex. 7.

<sup>10</sup> Ex. 8.

<sup>11</sup> See 2 AAC 64.250.

<sup>12</sup> 2 AAC 64.250(a).

<sup>13</sup> See CSSD 11/16/15 Submission to Record; Ex. 10. Exhibit 10 is a database record from the Bureau of Vital Statistics. AS 25.20.050 (b) designates the Bureau of Vital Statistics to be “the depository for such acknowledgment and adjudication. The acknowledgment or adjudication shall be forwarded to the bureau in accordance with appropriate regulations of the bureau, and shall be noted on and filed with the corresponding original certificate of birth.”

Where, as here, a putative parent has signed a completed AS 18.50.165(a) form acknowledging paternity, that acknowledgement can then only be withdrawn on the *earlier* of either:

- (1) 60 days after the date that the person signed it, or
- (2) the date on which judicial or administrative procedures are initiated to establish child support in the form of periodic payments or health care coverage for, or to determine paternity of, the child who is the subject of the acknowledgement.<sup>14</sup>

It appears from Exhibit 10 that the acknowledgement of paternity was signed in September 2014. Accordingly, Mr. C had 60 days thereafter to withdraw his acknowledgement.<sup>15</sup> “After this time period has passed, the acknowledgment may only be contested *in superior court* on the basis of fraud, duress, or material mistake.”<sup>16</sup> Here, it has been over a year since the acknowledgement of paternity was signed.

Therefore, summary adjudication is appropriate, because there are no genuine issues of material fact. To the extent to which Mr. C now seeks to withdraw his acknowledgement of paternity, he may only do so through an action in superior court. Because CSSD lacks jurisdiction to address the issue, Mr. C’s appeal fails as a matter of law.

#### **IV. Conclusion**

There are no genuine issues of material fact in this appeal. CSSD’s request to dismiss Mr. C’s appeal is therefore granted.

DATED: November 30, 2015.

By: Signed  
Cheryl Mandala  
Administrative Law Judge

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<sup>14</sup> AS 25.20.050(1).

<sup>15</sup> AS 25.20.050(1)(1). Indeed, the later date under AS 25.20.050(1)(2) – the date on which CSSD initiated support procedures – also passed prior to any attempt by Mr. C to withdraw his acknowledgement of paternity.

<sup>16</sup> AS 25.20.050(1) (emphasis added).

**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 within 30 days after the date of this decision.

DATED this 15<sup>th</sup> day of Dec., 2015.

By: Signed  
Signature  
Cheryl Mandala  
Name  
Administrative Law Judge  
Title

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