

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

| | | |
|------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| T N |) | OAH No. 16-0313-CSS |
| _____ |) | Agency No. 001050536 |

DECISION & ORDER GRANTING SUMMARY ADJUDICATION

I. Introduction

T N sought relief from his child support arrears in the form of a “Request for Relief of a Default Administrative Child Support Order.” On February 19, 2016, the Child Support Services Division (“CSSD”) denied his request. Mr. N appealed.

Prior to the hearing, CSSD moved for summary adjudication. At the hearing, the parties presented argument on the motion, after which they presented testimony and other evidence. Having reviewed the record and after due deliberation, CSSD’s motion for summary adjudication is granted. The relief Mr. N seeks is not permitted as a matter of law.

II. Facts

This is an arrears-only case. Mr. N’s daughter, U, is now an adult, and Mr. N has no ongoing support obligation. However, he indicated that he owes roughly \$90,000 in child support arrears based on child support orders that originated in 1994.

In October 1994, CSSD issued a child support order, called a “Notice and Finding of Financial Responsibility,” that established Mr. N’s support obligation for U at \$485 per month.¹ The support calculation was based on Mr. N’s wage earnings between July 1, 1993 and June 30, 1994, plus his Alaska PFD.² Mr. N agrees that he was working and earning the income used to calculate his 1994 support obligation.³

In April 1999, a court in the State of Alabama issued a superseding child support order that modified Mr. N’s ongoing support obligation to \$393.75 per month, effective May 1, 1999.⁴ Mr. N does not dispute the calculation of his support obligation in 1999.⁵

¹ Ex. 2. CSSD was at that time known as the Child Support Enforcement Division, or CSED.
² Ex. 2, p.4 (Alaska Dep’t of Labor data for the 3rd & 4th Quarters of 1993, 1st & 2nd Quarters of 1994, plus Mr. N’s PFD).
³ Testimony of Mr. N.
⁴ Ex. 3.
⁵ Testimony of Mr. N.

Mr. N worked for the same employer for many years. He agrees that CSSD properly set his child support amount based on his actual income information back in 1994, as did the Alabama court in 1999. He indicated that he was working and able to pay his support on time until problems arose in 2007. At some point in 2007, he lost his job and hit a rough patch in life. He was not able to keep up with his support payments.⁶ Because he stopped earning steady income and paying his support regularly, Mr. N's arrears balance grew significantly.

It appears that CSSD has acted as the enforcement agency for Mr. N's child support from 1994 to the present. The record shows that Mr. N made some contact with CSSD in 2007, presumably after he lost his job.⁷ However, Mr. N did not request a modification of his ongoing support obligation from a court in Alabama or in Alaska.

Mr. N estimates that his arrears balance is now roughly \$90,000. In February 2016, he contacted CSSD to discuss options for managing his case. He requested relief from his arrears and an opportunity to settle his case at a reduced sum.⁸ CSSD treated Mr. N's request as a "Request for Relief from a Default Administrative Child Support Order." CSSD determined that neither the 1994 Administrative Support Order nor the 1999 Alabama court decree would qualify for the requested relief, and it denied his request.⁹

Mr. N appealed.¹⁰ A hearing took place on April 21, 2016. Mr. N appeared telephonically, as did Child Support Specialist Brandi Estes of CSSD. Grandparent and former custodian E H did not participate. The hearing was recorded. The record closed at the end of the hearing.

III. Discussion

Summary adjudication is appropriate when there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law.¹¹ In this case, there are no contested issues of fact. The question whether Mr. N is entitled to relief from his arrears balance is a question of law.

Two child support orders have governed Mr. N's case: the 1994 CSSD Administrative Support Order, and the superseding 1999 Alabama court decree. CSSD is merely the agency that

⁶ Testimony of Mr. N.

⁷ CSSD records indicate that it mailed him information regarding the process to vacate a default support order on February 22, 2007. CSSD Pre-hrg brief at 1.

⁸ Testimony of Mr. N.

⁹ Ex. 4.

¹⁰ Ex. 5.

¹¹ *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

is enforcing the Alabama court decree, however. It does not have authority to review or modify the Alabama order, and the Office of Administrative Hearings similarly lacks jurisdiction to review or modify a court order.¹² As a result, Mr. N's Request for Relief of a Default Administrative Child Support Order cannot apply to the Alabama decree. It would apply only to relief from CSSD's 1994 order.

A parent is obligated both by statute and at common law to support his or her children.¹³ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. An obligor may request modification of an existing child support order, which may be granted upon a showing of "good cause and material change in circumstances."¹⁴ When a modification is granted, it becomes effective beginning the first of the month after the parties are served with notice of the modification request.¹⁵ Beyond that, however, retroactive modification is not permitted. Likewise, retroactive modification of child support arrears is not permitted.¹⁶

There is a very narrow exception to the rule barring retroactive modification. That exception is restricted to cases where the support order was set based on a "default amount" or a "default income figure," rather than the obligor's actual ability to pay.¹⁷ When a support order was based on a default amount, an obligor may later seek review of that "Default Administrative Child Support Order." Mr. N's appeal arises out of his request for such a review. However, his child support order was not set based on a default amount.

Department of Revenue regulations are quite specific about what does and does not qualify as a "default income figure."¹⁸ A support order is not based on a default income figure if it was based on actual income information from the obligor.¹⁹ It is also not based on a default income figure if the obligor's income involved estimated income that was based on incomplete but actual income for the current or a prior year.²⁰ Finally, a support order is not based on a

¹² *Webb v. State*, 120 P.3d 197, 199 (Alaska 2005) (court-ordered child support may only be modified by the court).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁴ AS 25.27.190(e).

¹⁵ 15 AAC 125.321(d).

¹⁶ Alaska Civil Rule 90.3(h).

¹⁷ See A.S. 25.27.195(b) and 15 AAC 125.121(a).

¹⁸ 15 AAC 125.121(j).

¹⁹ 15 AAC 125.121(j)(2)(A).

²⁰ 15 AAC 125.121(j)(2)(B).

default income figure solely because the obligor failed to respond to the notice and finding of financial responsibility.²¹

There is no dispute in this case that CSSD set Mr. N's child support obligation in 1994 based on his actual income. As a matter of law, therefore, that order was not based on a "default amount" or a "default income figure." Accordingly, it cannot be vacated. Doing so would result in an impermissible retroactive modification. It is highly unfortunate that Mr. N did not request that a court modify his ongoing support obligation back in 2007 or 2008, after his circumstances had so dramatically changed. Because he no longer has an ongoing obligation, that option is no longer available.²²

Mr. N's administrative child support order, issued as a Notice and Finding of Financial Responsibility in 1994, cannot be adjusted at this point in time. Accordingly, his request was properly denied, and CSSD's decision is affirmed.

IV. Conclusion

CSSD's motion for summary adjudication is granted. The Administrative Review Decision dated February 19, 2016, which denied Mr. N's Request for Relief from a Default Administrative Child Support Order, is affirmed. Mr. N no longer has an ongoing support obligation, so his case is an arrears-only matter. CSSD's Administrative Notice and Finding of Financial Responsibility, dated October 15, 1994, governed Mr. N's \$485 monthly support obligation for the period July 1, 1994 through April 30, 1999. The State of Alabama court decree dated April 14, 1999 governed his \$393.75 monthly support obligation from May 1, 1999 until U was no longer eligible for support.

DATED: May 2, 2016.

By: Signed
Kathryn A. Swiderski
Administrative Law Judge

²¹ 15 AAC 125.121(j)(4).

²² At the hearing, the CSSD representative encouraged Mr. N to contact his CSSD caseworker to explore other possible means of addressing his arrears balance, such as through the arrears forgiveness program set out at 15 AAC 125.650 - 125.695.

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 17th day of May, 2016.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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