

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

In the Matter of	)	
	)	
C K	)	OAH No. 16-1320-CSS
_____	)	Agency No. 001187010

**DECISION AND ORDER**

**I. Introduction**

C K appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 10, 2016. The modification added a second child, Y, to Mr. K’s existing child support order for a younger child, Z. It modified his support obligation from \$50 per month for one child, to \$684 per month for two children, effective July 1, 2016. Lastly, it calculated pre-order arrears of \$177 for Y, for the month of June 2016. Mr. K asserted that he was fraudulently identified as Y’s father. He also asserted that the family was intact for nearly 16 years, and he does not owe child support for that period of time.

The relief Mr. K seeks is not available through this appeal. Under the circumstances of Mr. K’s case, neither CSSD nor the administrative law judge has authority to initiate disestablishment of paternity proceedings. Further, CSSD must review and act on Mr. K’s request to suspend child support for periods of time in which he lived with the custodial parent. Accordingly, the October 10, 2016 Modified Administrative Child Support and Medical Support Order is affirmed.

**II. Facts<sup>1</sup>**

*A. Material Facts*

Mr. K and custodial parent F C are the legal parents of two children, Z I. K, who is 14, and Y C, who is 16.<sup>2</sup> In 2012, CSSD established Mr. K’s support obligation for young Z, setting his ongoing amount at \$50 per month due to Mr. K’s incarceration at that time.<sup>3</sup> Shortly after CSSD issued the 2012 child support order, Ms. C withdrew from CSSD services.<sup>4</sup> CSSD then stopped processing any child support payments for young Z, and it closed the case.

On June 8, 2016, Ms. C again applied for CSSD services.<sup>5</sup> She requested child support

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<sup>1</sup> Unless otherwise noted, the material facts are based on the testimony of C K.  
<sup>2</sup> Exhibit 1, 2, 8.  
<sup>3</sup> Exhibit 2.  
<sup>4</sup> Exhibit 3.  
<sup>5</sup> Exhibit 4.

from Mr. K for young Z, as well as for Y.<sup>6</sup> She indicated that Mr. K's name appears on both boys' birth certificates.<sup>7</sup> In response, on June 21, 2016, CSSD sent the parties a Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order.<sup>8</sup> Among other requests, it directed both parents to submit income information.

CSSD did not receive any response from either parent. It accessed Mr. K's wage information over his last four consecutive quarters of employment, as reported by his employers to the Alaska Department of Labor.<sup>9</sup> Based on this information, it determined that Mr. K's expected 2016 gross wage income totals \$36,962.01.<sup>10</sup> CSSD then calculated Mr. K's child support obligation under Civil Rule 90.3(a). It determined that his ongoing obligation is \$684 for two children (\$507 for one child), effective July 1, 2016.<sup>11</sup> It calculated arrears of \$177 for Y's case, covering the month of June 2016.<sup>12</sup>

Mr. K appealed.<sup>13</sup> He raised two objections to the modified support order: the paternity finding for Y, and the assessment of child support for periods of time in which the family lived together.

The formal administrative hearing took place on December 2, 2016. Mr. K appeared in person, represented himself and testified on his own behalf. Ms. C did not appear, and she could not be reached by telephone at her telephone number of record. However, she received notice of the hearing, as evidenced by the certified mail return receipt postcard in the Office of Administrative Hearings case file. Child Support Specialist Brandi Estes appeared in person and represented CSSD. The hearing was audio-recorded. All offered documents were admitted into the record, and the record closed at the conclusion of the hearing.

### **III. Discussion**

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order is incorrect.<sup>14</sup> Mr. K filed this appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated October 10, 2016 is incorrect.

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<sup>6</sup> *Id.*  
<sup>7</sup> Exhibit 4, p. 2.  
<sup>8</sup> Exhibit 5.  
<sup>9</sup> Exhibit 6, p. 6.  
<sup>10</sup> Exhibit 6, pp. 6, 11.  
<sup>11</sup> Exhibit 6.  
<sup>12</sup> Exhibit 6, p. 9.  
<sup>13</sup> Exhibit 7.  
<sup>14</sup> 15 AAC 05.030(h).

A parent is obligated both by statute and at common law to support his or her children.<sup>15</sup> Civil Rule 90.3 provides the formula for calculating child support awards. It states 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.

Once a child support order has been issued, either party may request a modification. The modification will be made upon a showing of "good cause and material change in circumstances."<sup>16</sup> A material change in circumstances is established when a new child is added to an existing order, as occurred in this case.

A. *Paternity of Y*

Mr. K's first objection to the October 10, 2016 support order is that Ms. C fraudulently identified him as Y's father. However, the evidence in the record shows that, on August 13, 2013, Mr. K and Ms. C executed an affidavit of paternity, in which they jointly attested to Mr. K's paternity of Y.<sup>17</sup> The signatures of each party were verified by a notary when they signed the affidavit.<sup>18</sup> Because of the two-party affidavit of paternity, the Bureau of Vital Statistics placed Mr. K's name on Y's birth certificate.<sup>19</sup> Mr. K does not remember signing the document.<sup>20</sup> However, after reviewing a copy during the hearing, he acknowledged that the signature appeared to be his.

Alaska Statute 25.27.166(a) authorizes CSSD to initiate proceedings to disestablish paternity of a child, if a court has not already issued an order establishing paternity. However, the statute specifically bars CSSD from disestablishing paternity in situations where the two parents have acknowledged paternity using the Affidavit of Paternity form described in AS 18.50.165.<sup>21</sup> In that situation, the signed acknowledgement of paternity constitutes a "legal finding of paternity" for a child born out of wedlock.<sup>22</sup>

The two-party affidavit in this case meets all of these requirements, and it constitutes a legal finding that Mr. K is Y's father. The time period in which Mr. K could have voluntarily withdrawn his acknowledgement of paternity has passed.<sup>23</sup> Therefore, if he wishes to contest the

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<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>16</sup> AS 25.27.190(e).

<sup>17</sup> CSSD submitted a copy of the affidavit at the hearing, which is in the record at Exhibit 8.

<sup>18</sup> *Id.*

<sup>19</sup> See AS 18.50.160(e)(2); AS 18.50.165 (acknowledgment of paternity by affidavit).

<sup>20</sup> Testimony of Mr. K.

<sup>21</sup> AS 25.27.166(a)(2); AS 25.20.050(a)(3).

<sup>22</sup> AS 25.20.050(l).

<sup>23</sup> *Id.*

validity of the affidavit, he must do so in superior court, and the challenge may only be made on the basis of fraud, duress, or material mistake.<sup>24</sup>

Under the circumstances of this case, neither CSSD nor the administrative law judge has the authority to order paternity testing or to initiate proceedings seeking to disestablish Mr. K's paternity of Y. For purposes of this administrative child support action, Mr. K's paternity of the child has been established. Therefore, CSSD appropriately added Y to Mr. K's child support order.

*B. Suspension of Support Obligation*

Mr. K asserted that he lived with Ms. C, Y, and Z until March 30, 2016. He stated that, with the exception of one eight-month period in 2012 or 2013 when he was incarcerated, the family was intact for sixteen years. Mr. K submitted some evidence supporting this assertion.<sup>25</sup> He argued that he does not have a child support obligation for periods of time in which the family was intact.

K is incorrect that he did not have any child support obligation while the family was intact. Once a child support order is issued it remains in effect, even if it is unenforced. For this reason, Mr. K's child support order for Z has been in effect since 2012, even though CSSD did not enforce the order after Ms. C closed the case in 2013. Similarly, Mr. K's support order for both Z and Y has been in effect since July 2016.

However, Mr. K is correct that his support obligation can be suspended for any period of time in which he lived with Ms. C.<sup>26</sup> Under CSSD regulations at 15 AAC 125.870, Mr. K can initiate this process by submitting a request for suspension directly with CSSD. If the agency determines that suspension is appropriate, it will send a notice of the suspension to each party.<sup>27</sup> The notice provides the parties an opportunity to request an administrative review, if they contest the agency's decision. Following its administrative review (if one is requested), CSSD would issue an administrative review decision.<sup>28</sup> The regulations specifically preclude an administrative appeal from such a decision. Instead, they clarify that the decision is a final agency action, appealable only to the superior court.<sup>29</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *See* Exhibit A (Rental Agreement for both parents to lease a home beginning 8/1/15); Exhibit B (Notice to Quit dated March 2016); Exhibit C (sworn statement of landlord H T that C K and F C lived together from 8/1/15 to 4/1/16); Exhibit D (sworn statement of X Q that the family lived together for 16 years, until March 30, 2016).

<sup>26</sup> *See* 15 AAC 125.870(a)(1).

<sup>27</sup> 15 AAC 125.870(g).

<sup>28</sup> 15 AAC 125.870(f).

<sup>29</sup> *Id.*

As explained during the hearing, CSSD must internally review Mr. K's request to suspend his support obligation, and it must make a determination whether a suspension is warranted. Therefore, even if Mr. K is correct that he lived with Ms. C and the two boys for nearly 16 years, the issue of suspension cannot be resolved in this administrative proceeding. However, CSSD indicated that it will review this request, and it will take action as appropriate.<sup>30</sup>

#### **IV. Conclusion**

Mr. K raised two concerns related to the modified child support order. However, those concerns cannot be resolved in this appeal.

For purposes of this administrative appeal, Y was properly added to the support order, because the two-party affidavit of paternity establishes Mr. K as Y's legal father. To disestablish paternity, Mr. K must seek relief in superior court. Mr. K's request to suspend his support obligation while he lived with Ms. C also cannot be resolved in this appeal. CSSD will review this request administratively and take further action, as provided by applicable regulations.

#### **V. Child Support Order**

- The Modified Administrative Child and Medical Support Order dated October 10, 2016, is affirmed and remains in full force and effect.

DATED: December 5, 2016.

By: Signed \_\_\_\_\_  
Kathryn Swiderski  
Administrative Law Judge

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<sup>30</sup> Mr. K also alleged that Ms. C has received public assistance under false pretenses. He raised this issue out of concern that his child support obligation could not be suspended for any periods of time in which public assistance was paid on behalf of the children. CSSD provided Mr. K with information on appropriate steps for pursuing further investigation of his claim. It also indicated that it would follow-up on the allegation, within the bounds of its authority.

## 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 20<sup>th</sup> day of December, 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.]