

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

IN THE MATTER OF: )

T. T. T. )

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) OAH No. 04-0170-CSS  
) CSSD NO. 001112872  
) DOR NO. 040772  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor T. T. T.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 28, 2004. The Obligees are B., DOB 00/00/00, and C., DOB 00/00/04.

The formal hearing was held on January 11, 2005. Mr. T. did not appear; the Custodian, R. H. S., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on January 21, 2005.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. T.'s appeal should be denied. CSSD correctly calculated his child support obligation.

**II. Facts**

**A. History**

Mr. T.'s previous support order was set at \$197 per month for B. in June 2002.<sup>1</sup> On May 12, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order so as to add C. to the order.<sup>2</sup> On October 28, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T.'s modified ongoing child support at \$328 per month for two children, effective June 1, 2004.<sup>3</sup> Arrears for public assistance benefits paid on C.'s behalf were established at \$69 per month from February 2004

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<sup>1</sup> Exh. 2 at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

through May 2004, for a total of \$276 for that period.<sup>4</sup> Mr. T. filed an appeal on November 2, 2004.<sup>5</sup> He signed for his notice of the formal hearing on December 13, 2004.<sup>6</sup>

Mr. T. did not appear for the formal hearing. His appeal states only that he wants a formal hearing for DNA testing for C.<sup>7</sup> CSSD indicated in its Pre-Hearing Brief that Mr. T.'s name appears on the birth certificates of both children, but CSSD had already sent him two petitions for genetic testing, apparently at his request. CSSD said that as soon as Mr. T. submits a signed petition, CSSD would arrange genetic testing for him.

### **B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. T. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. CSSD correctly calculated Mr. T.'s modified child support obligation at \$328 per month for two children.

### **III. Discussion**

Mr. T. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>8</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>9</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>10</sup>

Mr. T. appealed the Modified Administrative Child Support and Medical Support Order and requested DNA testing for C. He did not contest the calculation of his modified ongoing

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<sup>4</sup> Exh. 6.

<sup>5</sup> Exh. 5.

<sup>6</sup> Certified mail green card returned to the Office of Administrative Hearings on December 16, 2004.

<sup>7</sup> Exh. 5.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> AS 25.27.190(e).

child support amount. In order to initiate proceedings to disestablish his paternity of C., Mr. T. must file a petition to disestablish paternity on forms provided by CSSD.<sup>11</sup> CSSD indicated it has already sent Mr. T. the necessary petition on two occasions, and as soon as he submits a completed petition, CSSD will be able to initiate the proceedings.

Affirming CSSD's child support order will not prejudice Mr. T. If his paternity of C. is disestablished, his arrears for the public assistance benefits paid on her behalf will be extinguished.<sup>12</sup> Accordingly, I conclude that CSSD's Modified Administrative Child Support and Medical Support Order should be affirmed.

#### **IV. Conclusion**

Mr. T.'s only appeal issue concerns obtaining DNA testing regarding his paternity of C. CSSD has already sent Mr. T. a petition for genetic testing, so as soon as he completes and submits the petition, CSSD will be able to go forward with disestablishment proceedings.

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

- Mr. T. is liable for modified ongoing child support in the amount of \$328 per month for two children, effective June 1, 2004;
- Mr. T. is liable for arrears for C. in the amount of \$69 per month from February 2004 through May 2004.

DATED this 8th day of June, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>10</sup> 15 AAC 125.321(d).

<sup>11</sup> 15 AAC 125.236(a).

<sup>12</sup> AS 25.27.166(d).

### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of T. T. T. be adopted as of this date and entered in the file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 8th day of June, 2005.

By: Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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