

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

IN THE MATTER OF:)

C G. G)

) OAH No. 05-0295-CSS
) CSSD Case No. 001134048
)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of C G. G for the support of C J. G (DOB 00/00/03). The custodian of record is F S-P.

The administrative law judge conducted a telephonic hearing on May 10 and July 26, 2005. Mr. G appeared telephonically. David Peltier, Child Support Specialist, represented the division. Ms. S-P did not appear and was not at the telephone number in the file.

II. Facts

C G was born on 00/00/03. C G, believing he was the father, signed an acknowledgment of paternity. In 2004, having reason to believe he was not the father, Mr. G obtained genetic testing. On October 4, 2004, the laboratory issued its genetic test results, excluding Mr. G from being the father. The laboratory's report states that it had relied on the samples submitted and that it could not confirm the chain of custody of the sample for purposes of admission in a court of law.¹

In November, 2004, the child's mother applied for and began receiving public assistance benefits. Because Mr. G was listed on the child's birth certificate, on December 13, 2004, the division issued an administrative child support order in Mr. G's name, establishing ongoing support in the amount of \$547 per month effective January 1, 2005, and pre-order arrears in the amount of \$10,393 for the period from June 1, 2003 through December 31, 2004.² On January 9, 2005, Mr. G filed a request for administrative review, contesting paternity and asking for genetic testing. On March 4, 2005, the division denied the request for genetic testing on the ground that Mr. G had

¹ Exhibit 4, p. 4.

² Ex. 1, p.1, 2.

acknowledged paternity, directing him to pursue that issue through the court system. The division issued an amended administrative order for arrears and ongoing support in the amount of \$505 per month beginning November 1, 2004.³

On March 25, 2005, Mr. G filed an administrative appeal and requested an administrative hearing to contest the amount of the administrative support order. By that time, Mr. G had also filed a motion in the Superior Court to disestablish his paternity (No. 3XX 00-000 CI).

At the hearing on the administrative appeal, Mr. G established that he did not receive an Alaska Permanent Fund dividend in 2004, and the division did not contest a reduction of the support order to \$492 per month to reflect that fact. The division stated it would retain amounts collected on the order pending completion of the proceedings in the judicial disestablishment action, and further action on the administrative appeal was held in abeyance.

In connection with the judicial disestablishment action, the division conducted a second genetic test, by a different laboratory, using procedures that comply with appropriate chain of custody procedures. The test results, issued on November 29, 2005, excluded Mr. G as the father.⁴ The superior court issued an order disestablishing Mr. G's paternity for C J. G, effective January 11, 2006.

III. Discussion

At the time the division issued the amended administrative support order, Mr. G was the presumptive father by virtue of his acknowledgement of paternity. As the presumptive father, Mr. G had a presumptive duty of support and the division had authority to issue an administrative support order.⁵ In the absence of a bond or other security, the division had authority to collect payments accruing on the administrative support order while an administrative appeal was pending, even though the order was not final and was subject to adjustment or reversal on appeal.⁶ Because the order was valid when entered, and the effective date of the judicial disestablishment order was January

³ Exhibit 6. The effective date of the order was changed from the date of the child's birth, to the date on which the mother applied for public assistance.

⁴ Exhibit A.

⁵ State, Department of Revenue, Child Support Enforcement Division v. Maxwell, 6 P.3rd 733 (Alaska 2000); AS 25.27.140(a).

⁶ AS 25.27.170(b).

11, 2006, the administrative order will not be vacated. However, Mr. G is entitled to adjustment of the amount of the order in accordance with preponderance of the evidence at the administrative hearing. In addition, the administrative support order must be adjusted to terminate on the effective date of the judicial disestablishment order, since after that date Mr. G no longer had any support obligation, presumptive or otherwise.

When there is no prior judgment of paternity, and paternity is disestablished by the superior court before an administrative support order based on a presumptive support obligation becomes final, the putative father is not liable for arrears that have accrued on the administrative order.⁷ In addition, the Alaska Supreme Court has recognized the general principle:

that when paternity is disestablished and a support obligation is vacated on a ground that would warrant relief under [Civil] Rule 60(b), [the division] ordinarily will be required to reimburse all funds in its possession when the paternity action was filed, as well as any additional funds it collects thereafter, regardless of whether those funds reflect child support debt accruing before or after the date of filing.^[8]

In this case, there was no prior judgment of paternity; the administrative order was based on a presumptive support obligation. Mr. G filed his motion to disestablish paternity in March, 2005, before a final administrative support order was issued. The amended administrative support order was timely appealed and was not final on January 11, 2006, the date the superior court disestablished paternity.⁹ Accordingly, Mr. G is not liable for any arrears on the administrative support order. The division should reimburse funds collected on the order that were in its possession on the date the motion for disestablishment was filed, or were thereafter collected, in accordance with the general principle expressed above.¹⁰

⁷ Compare, State, Department of Revenue, Child Support Enforcement Division v. Button, 7 P.3rd 74 (Alaska 2000) (obligor “not required to pay arrears that accrued before the disestablishment order because no final support order had been in effect.”); with State, Department of Revenue, Child Support Enforcement Division v. Ferguson, 977 P.2d 95 (Alaska 1999) (division may continue to collect arrears that accrued on a final administrative order, based on a valid judgment of paternity, even after paternity is disestablished).

⁸ Atcherian v. State, Department of Revenue, Child Support Enforcement Division, 14 P.3rd 970 (Alaska 2000). Relief is available from the division on substantially the same grounds as Civil Rule 60(b), pursuant to 15 AAC 125.125.

⁹ AS 25.27.170(b); Button, *supra*.

¹⁰ See, e.g., Atcherian v. State, Department of Revenue, Child Support Enforcement Division, 14 P.3rd 970 (Alaska 2000) (reimbursement of funds in the division’s possession that were collected after date of motion to vacate paternity judgment, where obligor had not acknowledged paternity); State, Department

IV. Conclusion

A final administrative support order should be entered in the amount of \$492 per month, effective November 1, 2004, and terminating on January 11, 2006, barring any further collection on the administrative order, and discharging Mr. G from liability for arrears accruing after the date he filed a motion to disestablish paternity.

ORDER

1. The Amended Administrative Child Support and Medical Support Order is amended as follows: the amount due under the order is modified to \$492 per month, and the order is terminated effective January 11, 2006.
2. Effective on the date of this order, the division may not take any action to collect arrears that accrued on the order while it was in effect.
3. Mr. G's liability for arrears that accrued after the date he filed a motion to disestablish paternity is discharged.
4. The division shall reimburse Mr. G for amounts collected that are in the division's possession as may be appropriate.

DATED: February 27, 2006

Signed

Andrew M. Hemenway
Administrative Law Judge

of Revenue, Child Support Enforcement Division v. Maxwell, 6 P.3rd 733 (Alaska 2000) (reimbursement of funds in the division's possession that were collected at any time, where obligor was presumptive father but had not acknowledged paternity); State, Department of Revenue, Child Support Enforcement Division v. Wetherelt, 931 P.2d 383 (Alaska 1997) (no reimbursement of funds in the division's possession collected on a final administrative support order prior to motion to disestablish, where obligor was named on birth certificate); State, Department of Revenue, Child Support Enforcement Division v. Mitchell, 930 P.2d 1284 (Alaska 1997) (reimbursement of funds in division's possession, where obligor had denied paternity before another state agency and was adjudicated father by default).

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.

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 17th day of March, 2006.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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