

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

In the matter of:	)	
	)	OAH No. 06-0394-CSS
M. S. L.	)	CSSD No. 001139119
_____	)	

**DECISION AND ORDER**

**I. Introduction**

M. S. L. appealed an Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 23, 2005. The obligee child is O. L., born 00/00/04. The other parent is A. T.

CSSD filed a motion to dismiss on the basis that the appeal was over 117 days late. The motion was mailed to Mr. L. and Ms. T. The Alaska Office of Administrative Hearings (OAH) attempted to give notice to both parents of a formal hearing to be held June 20, 2006, using Certified Mail sent fifteen days in advance. Mr. L.'s was sent to the address he provided in his appeal request;<sup>1</sup> Ms. T.'s to the address on file for her. No return receipts were received. Since the notice had been duly mailed to the correct addresses, the hearing went forward.

A.J. Rawls, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Neither Mr. L. nor Ms. T. contacted OAH in advance of the hearing. Neither appeared at the hearing. The Administrative Law Judge called the home and cellular telephone numbers on record and failed to reach the parties at those numbers. Messages were left at each number. The hearing proceeded without their participation. The judge and Mr. Rawls noted that Mr. L. claimed not to have been served with the November 23 order, and claimed that he has shared physical custody of O. Mr. Rawls offered new exhibits showing the method by which Mr. L. had been served.

Under 15 AAC 05.030(j), "[i]f a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless

---

<sup>1</sup> Mr. L.'s appeal request used the wrong zip code for his street address, but OAH used the correct zip code in its hearing notice.

the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.” Neither parent made such a showing.

Because this appeal was untimely, the motion to dismiss will be granted.

## **II. Facts**

Mr. L.’s child support obligation for O. was established at \$228 per month from August 1, 2005 based on his income information and based upon the assumption that Ms. T. has primary physical custody.<sup>2</sup> In fact, Ms. T. did apparently have primary physical custody up to December 19, 2005,<sup>3</sup> but after that date custody has been shared on a 50-50 basis.<sup>4</sup>

The order setting child support was served by a process server on February 1, 2006 at 000 I. #9, where Mr. L. was then living.<sup>5</sup> The documents were accepted by Mr. L.’s sister, who is seventeen. Mr. L. did not seek administrative review. He filed this formal appeal on May 24, 2006.

## **III. Discussion**

To challenge an order setting a child support obligation, Mr. L. needed to request administrative review within 30 days of being served with the order.<sup>6</sup> After that, if he was not satisfied with the outcome, he could appeal for a formal hearing with OAH.<sup>7</sup>

Mr. L. says he was not served with the order. In Alaska, as in most states, service can be made “by leaving copies . . . at the individual’s dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.”<sup>8</sup> In this case, the process server’s report records service at the place where he was living by handing the document to his seventeen-year-old sister. Unless there is a demonstration to the contrary, this would be a person

---

<sup>2</sup> Exhibit 2, p. 2.

<sup>3</sup> Exhibit 4, p. 16 (Domestic Violence Protective Order dated April 1, 2005).

<sup>4</sup> Exhibit 4, p. 2 (Order of Magistrate Wells).

<sup>5</sup> Exhibit 7.

<sup>6</sup> 15 AAC 125.118.

<sup>7</sup> 15 AAC 05.030.

<sup>8</sup> Alaska Rule of Civil Procedure 4(d)(1).

of “suitable age and discretion.”<sup>9</sup> Mr. L. did not participate in his hearing, and so he has not attempted to demonstrate that the service through his sister was inappropriate or ineffective.

Since the original service of the November 23 order must be presumed valid, the time for Mr. L. to challenge it ran from the date of the service, or February 1, 2006. The 30 days expired on March 3. His May 24 appeal was too late. It was also filed through the wrong channel, since he had to go through administrative review before going to a formal hearing.

It is obvious from the record that Mr. L. is at least partly correct about the underlying issue of custody. If he wants to have his child support obligation changed to reflect the actual custody situation, he should request a **modification** with CSSD.

#### IV. Order

- CSSD’s Motion to Dismiss is granted.
- M. L.’s May 24, 2006 appeal is dismissed.

DATED this 5<sup>th</sup> day of July, 2006.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

---

<sup>9</sup> In *Holmen v. Miller*, 206 N.W.2d 916 (Minn. 1973), the Minnesota Supreme Court held that even service through a thirteen-year-old girl is valid unless there is a demonstration that the girl was not sufficiently responsible to pass on the document. Although there are no cases in Alaska addressing “suitable age and discretion,” Alaska’s courts would likely take a similar approach, at least as to an older teen such as Mr. L.’s sister.

**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 25<sup>th</sup> day of July, 2006.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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