

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

IN THE MATTER OF:)

R. O. D.)

) OAH No. 06-0477-CSS

) CSSD No. 001138379

**ORDER GRANTING MOTION
FOR SUMMARY ADJUDICATION**

On July 13, 2006, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on July 27, 2006. Mr. D. participated initially, then terminated the telephone call after just a few minutes.¹ There are two custodians listed: S. A. R., mother of the children, whose notice of the hearing was returned without service and who did not appear; and B. L. E., paternal grandmother, who participated in person. David Peltier, Child Support Specialist, represented CSSD. The Obligee children are K. and O.

This is a paternity case that was initiated as a result of the children K. and O. receiving public assistance benefits. On October 17, 2005, CSSD served a Notice of Paternity and Financial Responsibility on Mr. D.² Genetic tests were conducted that indicate Mr. D.' probability of paternity of each child is 99.99%.³ On May 24, 2006, CSSD issued an Order Establishing Paternity.⁴ Mr. D. filed an appeal on June 23, 2006. He listed three reasons for the appeal: S. R. is not the Custodian of the children; she has never had custody of the younger child, O.; and the children live with Mr. D.' mother.⁵

CSSD filed the Motion for Summary Adjudication on July 13, 2006. CSSD's motion asserts Mr. D. does not dispute the findings regarding his paternity of the children, and the agency is aware of the fact that the children live with his mother, not Ms. R. CSSD requested that the motion for summary adjudication be granted because there are no material issues of fact necessitating a hearing and the agency is entitled to judgment as a matter of law.

¹ Mr. D. is currently incarcerated in Arizona. On July 26, 2006, he filed a written request, among other things, to be transported to Anchorage so he could participate in person. When the hearing was convened on July 27, 2006, Mr. D. was contacted by telephone, but he terminated the call after just a few minutes, and even before being informed of the ruling on his request for transport.

² Exhs. 1 & 2.

³ Exh. 3 at pgs. 1 & 4.

⁴ Exh. 4.

⁵ Exh. 5.

Mr. D. filed an opposition to the motion for summary adjudication, alleging, as he did in his appeal, that Ms. R. is not the Custodian, the children live at his residence with an older sibling and other family members, Mr. D. is the Custodian parent, and he should not be held solely responsible for the arrears. Further, Mr. D. requested that if “a hearing is required to resolve the issues, I am requesting to attend the hearing in person rather than participate by telephone.”⁶

CSSD correctly asserts the agency is entitled to summary judgment. CSSD’s regulations state that if the genetic test results establish a presumption of parentage under AS 25.20.050 (a probability of parentage of 95 percent or higher), and unless the agency orders additional genetic testing, the agency will issue an administrative review decision that finds that the putative father is the child's father.⁷

The genetic test results conducted in this case show that Mr. D.’s probability of paternity is 99.99% for each child. CSSD issued an Order Establishing Paternity based on those results. Mr. D. appealed the order, but he did not challenge the finding of paternity. Rather, he raised issues regarding his child support obligation, which can only be addressed in a separate proceeding after CSSD issues an Administrative Child Support and Medical Support Order. Thus, because Mr. D.’ paternity of K. and O. was established, and he did not dispute his paternity, the Order Establishing Paternity should be affirmed and CSSD’s Motion for Summary Adjudication should be granted.

As a final matter, Mr. D.’ request to be transported to Alaska was denied on the record after he terminated the telephone call. Mr. D. does not have a right to be transported to Alaska for a child support proceeding. Telephonic participation is a common occurrence in child support hearings, and it is specifically allowed by the regulations that apply to administrative hearings.⁸

Accordingly, I find there are no material facts in dispute in this matter, and conclude that CSSD is entitled to summary judgment as a matter of law. There are no issues that can be resolved at a formal hearing. Thus, in the absence of material issues of fact, CSSD’s Motion for Summary Adjudication should be granted, and Mr. D.’ appeal should be dismissed.

⁶ Opposition received July 26, 2006.

⁷ 15 AAC 125.222(b).

⁸ 2 AAC 64.260(c).

THEREFORE IT IS ORDERED:

- CSSD's July 13, 2006, Motion for Summary Adjudication is granted;
- Mr. D.' appeal is dismissed;
- CSSD's Order Establishing Paternity is affirmed.

DATED this 24th day of August, 2006.

By: Signed
Kay L. Howard
Administrative Law Judge

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 19th day of September, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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