

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

IN THE MATTER OF)	
)	
F. G., SR.)	Case No. OAH-07-0017-CSS
_____)	CSSD Case No. 001036648

DECISION & ORDER

I. Introduction

The obligor, F. G., Sr., appeals the decision of the Child Support Services Division (CSSD) issued on November 30, 2007 to deny his request for modification of an administrative support order. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on February 7, 2007. Mr. G. appeared by telephone, as did the custodian of record, K. G.. David Peltier represented CSSD. The children are S. G. (DOB 00/00/90) and W. A. (00/00/94). CSSD's decision is affirmed, noting that CSSD will not collect support for S. while he is living with Mr. G., and that Mr. G. may continue an action to disestablish paternity of W..

II. Facts

F. and K. G. were married several decades ago. They had a child, F. G., Jr. in 1986, and then S. G. was born on May 29, 1990. F. Jr. has since passed away. After these children were born, Mr. and Ms. G. split up, but they were never formally divorced. Ms. G. gave birth to W. A. on July 3, 1994. The parties both agree that there has never been any doubt that W. is not Mr. G.'s child.

It is unclear from the record when the first child support order for these children was established. According to CSSD,

This case was closed for a period of time but was reopened when Ms. G. applied for CSSD services in February 2002. Ms. G. listed one child on the application because the oldest was deceased and Ms. G. agreed the youngest, W. A., was not the child of Mr. G.. When CSSD reopened the case, support was sought for both S. G. and W. A. because Mr. and Mrs. G. were never divorced and through presumption of paternity based upon the existing marriage, Mr. G. would owe support for both children.

At the hearing, CSSD stated that Ms. G. did not request services for support of W. in 2002, and it did not have any evidence that she ever had requested that CSSD collect support for W. from Mr. G.. At various times, Ms. G. attempted to separate W. from the support order. She writes,

Due to F.'s financial situation, I have gone down to the Child Support office on numerous occasions to inquire about removing W. from F.'s child support bill.

I was told that it was F.'s responsibility to protest or request a hearing. I told this to him on numerous occasions. The best I could do was request his payments be dropped down to \$50 a month. Only when I had financial trouble did I raise that request.

I also attempted to talk to F. on occasion about getting a divorce. We have been separated far longer than we were ever married. He became upset over this, even though he told me he had twins with someone else.

I would just like the whole mess to end. I don't care if we ever receive any income from F.... In any case, I wish it could just be fixed. His parents are older now and he should be working and helping them – not just living off of them. I think this is all out of control.... If his debt could be erased, especially where W. is concerned, I would more than agreeable to seeing it happen.

In August of 2006 S. moved in with Mr. G.. Within a few hours of the hearing, Ms. G. withdrew from services.

III. Discussion

The principal issues that Mr. G. has raised have been addressed. CSSD is assisting Mr. G. with a paternity determination, and if he is not W.'s father then W. will be removed from the order.¹ CSSD has agreed that ongoing support should not be collected for S. for so long as he is living with Mr. G.. Mr. G. has not asserted that CSSD was incorrect in its determination that there has been no evidence submitted of a substantial change in Mr. G.'s finances that would result in a changed amount of support. Rather, than challenging the amount of support, Mr. G. has challenged whether support should be collected at all.

Mr. G. has requested that he be reimbursed for all of the support he has paid for W. over the last fourteen years. If the paternity test confirms that Mr. G. is not W.'s father, CSSD should return any money still in its possession, but it cannot return any money it has already handed over to the custodian.² Had Mr. G. asked for a determination of paternity back when CSSD first started collecting support, he would not have had to pay any support if he had been found to not be W.'s father. Having waited this long to resolve the matter, Mr. G. is not entitled to be reimbursed by CSSD for money that has already been paid to the custodian or the state for public assistance.

¹ After paternity is disestablished and W. is removed from the order, all arrears owed for W. shall be extinguished under AS 25.27.166(d), unless CSSD can clearly identify a federal law that would prohibit extinguishment of the arrears.

² *CSED v. Mitchell*, 930 P.2d 1284(Alaska 1997).
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This case illustrates the problems that arise from adherence to a policy of pursuing support from a legal father and ignoring the obligation of the biological father. Ms. G. has tried to make CSSD recognize that Mr. G. is not W.'s father, but the agency has apparently declined to make any effort to correct the situation. S. will soon emancipate, and because he is living with Mr. G. there is no support obligation due to him. W., however, has another four years before he emancipates. He lives with his mother, and CSSD has never established a support order against his father, in spite of the father's identity being readily available. Further, although the facts in the record are insufficient to make a determination on the matter, there is a strong argument to be made that CSSD never had jurisdiction to establish an order against Mr. G. for the support of W., because Ms. G. never requested services for support of W.; CSSD apparently established an order for W.'s support *sua sponte*, possibly without authority under AS 25.27.140. Discouraged by CSSD's refusal to acknowledge the truth, the custodian has simply withdrawn from CSSD's services and is unlikely at this point to ever come back to enforce W.'s rights against his father, who may be financially capable of supporting W.. The result of an inflexible adherence to a somewhat dated concept of legal paternity is that W. will have to continue through his entire childhood with no support from his father, who has managed to avoid ever paying a dime for the support of his child.

IV. Conclusion

Mr. G. is correct that he is not obligated to pay support for S. for so long as S. is living with him. While CSSD should not collect support, this does not affect the agency's decision to deny a request to review the amount of support that would be owed if Mr. G. did have to pay support. Mr. G. is entitled to pursue an action to disestablish paternity of W., and he is doing so at this time. Mr. G. is not entitled to reimbursement for previously paid support. None of these issues affect CSSD's decision to deny a request for modification.

V. Order

IT IS HEREBY ORDERED that CSSD's decision of November 30, 2007 to deny Mr. G.'s request for modification of an administrative support order be AFFIRMED. CSSD will not collect support for S. for any times that S. is living with Mr. G.. Mr. G. may continue his action to disestablish paternity of W.. CSSD is not obligated to reimburse Mr. G. for any previously collected support that it has disbursed to the custodian.

DATED this 1st day of June, 2007.

By: Signed _____
DALE WHITNEY
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 13th day of July, 2007.

By: Signed
Jerry Burnett
Director, Administrative Services

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