

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

IN THE MATTER OF: )  
H. O. )  
 )  
 ) OAH No. 07-0120-CSS  
 ) CSSD Case No. 001054902  
\_\_\_\_\_ )

**ORDER GRANTING SUMMARY ADJUDICATION**

On March 12, 2007, the Child Support Services Division (Division) filed a Motion for SumM. Adjudication in this appeal, alleging that no material facts are in issue and that it is entitled to judgment as a matter of law. H. O. is the obligor in this case, and L. A. is the custodial parent.

After a subpoena and an unsuccessful attempt to have Mr. O. and Ms. A. participate in a hearing on the motion, and indications from the correctional facility where Mr. O. is incarcerated that he would be very difficult to contact by phone, an order was issued giving Mr. O. and Ms. A. until May 7, 2007 to respond to the Division’s motion. Neither party responded.

This case is an “add-a-kid” modification action. Mr. O.’s existing child support for his children, A., E. and D., was previously set at \$490 per month. Mr. O.’s new ongoing modified child support order added his child, M., to that order.<sup>1</sup> Mr. O. is now in jail, so even though an additional child was added to the order, Mr. O.’s modified ongoing child support was reduced to the minimum amount, \$50 per month, effective January 1, 2007.<sup>2</sup>

In his request for a formal hearing, Mr. O. asked to suspend collection efforts during his incarceration, and then set up a payment plan after he is released from jail.<sup>3</sup>

The issue raised by Mr. O. does not preclude summary adjudication. A request for relief from collection efforts is not within the scope of an appeal of a modification order and should be

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<sup>1</sup> The procedure for setting ongoing child support and arrears when adding a new child to an existing child support order is set out in Alaska Regulation 15 AAC 125.340(e).

<sup>2</sup> Ex.2.

<sup>3</sup> Ex.4.

addressed to Mr. O.'s Division caseworker.<sup>4</sup> When one party asks for summary adjudication, a party wishing to have a hearing needs to show that there is a need to have a hearing to prove issues of disputed fact regarding the action being appealed.<sup>5</sup> Mr. O. did not respond to CSSD's motion. He has presented no genuine issue of material fact to be litigated regarding the modification action.

The Division correctly reduced Mr. O.'s support to the minimum amount of \$50 per month based on Mr. O.'s continued lack of income due to his incarceration.<sup>6</sup> The law requires that child support be set at no less than \$50 per month.<sup>7</sup>

The Division's Motion for Summary Adjudication is GRANTED. This case will not be scheduled for formal hearing.

**Child Support Order**

The Division's Modified Administrative Child and Medical Support Order issued February 5, 2007, is affirmed.

DATED this 10<sup>th</sup> day of August, 2007.

By: Signed

Mark T. Handley

Administrative Law Judge

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<sup>4</sup> Alaska Civil Rule 90.3(h)(1).

<sup>5</sup> *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990)

<sup>6</sup> *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

<sup>7</sup> *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).

**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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 24<sup>th</sup> day of August, 2007.

By:           Signed            
Mark T. Handley  
Administrative Law Judge

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