

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

In the Matter of	)	
	)	
J S. S	)	OAH No. 18-0349-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001148270

**DECISION AND ORDER**

**I. Introduction**

J S appeals the Department of Revenue, Child Support Services Division’s modification of his child support obligation for his child B. Mr. S has consented to the adoption of B, and therefore questions whether he has an ongoing duty of support.

Because the division correctly modified Mr. S’ support obligation based on the information it had, and adoption papers have not been filed with the division, the division’s decision is affirmed. However, the division has administratively suspended Mr. S’ child support obligation.

**II. Facts**

B T is the child of J S and Z T. In August 2007, the division issued an Administrative Child Support and Medical Support Order requiring Mr. S to pay \$154 in child support for B to Ms. T, the custodian of record.<sup>1</sup>

B has been living with his maternal grandmother since he was a toddler. In 2012, Mr. S, Ms. T, and B’s grandmother went to the post office to sign papers consenting to the adoption of B by B’s grandmother.<sup>2</sup>

Mr. S is now incarcerated. In October 2017, the division, on its own initiative, moved to modify Mr. S’ child support based on a change in Mr. S’ income. It notified Mr. S and Ms. T of the modification review on October 30, 2017.<sup>3</sup> On February 10, 2018, the division issued a Modified Administrative Child Support and Medical Support Order reducing Mr. S’ support obligation to \$50 a month. Mr. S requested a hearing, pointing out that he had signed adoption papers.<sup>4</sup>

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<sup>1</sup> Div. Ex. 1.  
<sup>2</sup> Testimony of S.  
<sup>3</sup> Div. Ex. 2.  
<sup>4</sup> Div. Ex. 4.

Before the hearing, the division confirmed through the Department of Health and Social Services, Division of Public Assistance that B was in third-party custody effective April 2012.<sup>5</sup> The division then decided to defer ongoing support accruing to Mr. S effective April 2012.<sup>6</sup>

A telephonic hearing was held on April 2, 2018. Mr. S represented himself. Child Support Specialist Patrick Kase presented the division's case and testified. Z T did not participate in the hearing; an attempt was made to contact her at the telephone number of record, but it was out of service. The record closed on April 2, 2018.

### **III. Discussion**

In this case, the division had on its own initiative reduced Mr. S' monthly child support obligation from \$154 to \$50 a month. Mr. S disputes the division's modified child support order because he signed adoption papers several years ago. Because Mr. S requested the hearing in this matter, Mr. S has the burden of proving that the division's decision modifying his existing child support obligation was incorrect.<sup>7</sup>

Mr. S' argument goes to the issue of whether he still owes child support at all, given that he has consented to B's adoption. Under Alaska law, a final decree of adoption issued by a court has the effect of relieving a natural parent of parental rights and responsibilities.<sup>8</sup> These responsibilities include child support. The division will also recognize cultural adoption resolutions issued by the governing body of an Indian child's tribe.<sup>9</sup> However, the Alaska Supreme Court has held that consenting to an adoption does not relieve a parent of the parent's child support obligation. Instead, "[t]he parental duty to support a child is relieved only when another person adopts the child and, as a consequence of the adoption, assumes the obligations to support the child."<sup>10</sup>

At the hearing, the division explained that it did not have final adoption papers for B on file, and it was not aware of the adoption issue until Mr. S filed his appeal. Mr. S testified that he did not have the adoption papers either, and that it would be difficult for him to obtain them because he is incarcerated.

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<sup>5</sup> Testimony of Kase.

<sup>6</sup> See 15 AAC 125.870(d)(1), providing that the division may administratively defer ongoing support accruing under an administrative support order of the state if the custodian of the child no longer maintains physical custody and an application for services from a third-part custodian has not been made.

<sup>7</sup> 15 AAC 05.030(h).

<sup>8</sup> AS 25.23.130(a).

<sup>9</sup> 15 AAC 125.845.

<sup>10</sup> *Agen v. State, Dep't of Revenue, Child Support Enforcement Division*, 945 P.2d 1215, 1218 (Alaska 1997).

Mr. S' testimony that he signed the forms necessary to consent to B's adoption is not sufficient to relieve him of his child support obligation. Mr. S has not shown that B's adoption was finalized by an adoption decree issued by a court or a cultural adoption resolution issued by the governing body of the child's tribe. Mr. S did not take issue with the amount of the support order, and the \$50 a month ongoing obligation reflected in the division's modified order is the minimum amount that may be ordered.<sup>11</sup> Because Mr. S has not shown that B has actually been adopted, the division's Modified Administrative Child Support and Medical Support Order dated February 10, 2018 should be affirmed.

Nothing in this decision prevents Mr. S from providing the division with a copy of an adoption decree or resolution and requesting that his child support obligation be modified accordingly.

#### **IV. Conclusion**

Mr. S has not established that the division's modification of his child support obligation was incorrect. The division's modification should be affirmed.

#### **V. Child Support Order**

The division's Modified Administrative Child Support and Medical Support Order, dated February 10, 2018, is affirmed.

Dated: April 2, 2018.

*Signed*  
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Kathryn L. Kurtz  
Administrative Law Judge

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<sup>11</sup> Alaska Rule of Civil Procedure 90.3(c)(3).

## 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 April, 2018.

By: Signed  
Signature  
Kathryn L. Kurtz  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]