

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

IN THE MATTER OF)	OAH No. 07-0298-CSS
S. T. D.)	CSSD No. 001130913
)	
_____)	

ORDER GRANTING SUMMARY ADJUDICATION

On June 18, 2007, a hearing was held to consider a Motion for Summary Adjudication of this appeal filed by the Child Support Services Division (Division). S. T. D., the obligor in this case, participated. J. B., the custodian, did not respond to the motion and did not participate in the hearing. The Division was represented by Andrew Rawls, Child Support Services Specialist.

The Division's Motion for Summary Adjudication in this appeal alleged that no material facts are in issue and that it is entitled to judgment as a matter of law. This case is a paternity action. The Division had already established Mr. D.'s child support obligation for his child, R., but the Division had provided genetic testing at Mr. D.'s request.

The Division sent Mr. D. a notice that the tests had shown a 99.99% probability that he was R.'s father. The Division issued an Administrative Decision Regarding Paternity testing on May 3, 2007. This decision confirmed the Division's earlier default paternity order. Mr. D. requested a formal hearing.

In his request for a formal hearing, Mr. D. explained that he is in jail and receives only \$8.00 per month. Mr. D. did not respond to the Division's Motion for Summary Adjudication. In addition to his concerns about his inability to pay for testing while he was in jail, Mr. D. was also concerned that the Division was charging him child support for the month of November 2005. At the hearing, Mr. D. argued that that he should not have to pay child support for that month because he lived with his children that month.

The issues raised by Mr. D. do not preclude summary judgment. Mr. D. has not shown

there is an issue of fact that would require an evidentiary hearing to resolve.¹ This case is just confirmation of the paternity establishment. As I explained at the hearing, Mr. D.'s concerns about his child support arrears do not directly relate to the order that is currently on appeal, which simply establishes that Mr. D. is R.'s father. Mr. D. no longer appears to dispute that he is R.'s father.

The Division is generally required by statute to try to collect the costs of genetic testing from the biological father.² The regulations that set the standards for determining whether it is appropriate for the Division to try to collect the costs of the testing from Mr. D. are found at 15 AAC 125.261, which provides in pertinent part:

Genetic testing costs in paternity proceedings

- (a) Except as provided in (b) of this section, the agency will assess against a child's putative father any costs that the agency pays for genetic testing. For genetic testing costs assessed under this section, the agency will include
 - (1) the amount billed to the agency for the genetic tests in the subject case by the genetic testing laboratory;
 - (2) the costs paid by the agency to transport the individuals to be tested in the subject case to the nearest available facility for collection of genetic testing samples; and
 - (3) the cost of food and lodging paid by the agency to individuals tested in the subject case.
- (b) The agency will not assess costs against a child's putative father under (a) of this section if
 - (1) the agency determines that the putative father is not the biological father of the child;
 - (2) the putative father is receiving public assistance when the agency issues the administrative decision finding paternity under 15 AAC 125.222; or
 - (3) the agency finds good cause not to assess costs against the putative father because the assessment of costs would
 - (A) not be in the best interests of the child;
 - (B) cause undue hardship to the putative father or the putative

¹*French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996).

²Alaska Statute 25.27.165, *Determination of paternity in an administrative proceeding*, provides in pertinent part:

- (i) The agency may recover any costs it pays for genetic tests required by this section from the putative father unless the testing establishes that the individual is not the father, except that costs may not be recovered from a person who is a recipient of assistance under AS 47.27 (Alaska temporary assistance program).

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 9th day of July, 2007.

By: Signed _____
Terry L. Thurbon for
Mark T. Handley
Administrative Law Judge

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