

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

IN THE MATTER OF:)

J. M. C.)

) OAH No. 07-0568-CSS

) CSSD No. 001148692

**DECISION AND ORDER GRANTING
MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

On September 14, 2007, CSSD filed a Motion for Summary Adjudication arguing that there is no factual dispute and that Mr. C.'s appeal should be denied as a matter of law. Oral argument on the motion was held on October 22, 2007. Neither the obligor, Mr. C., nor the Custodian, D. W., participated or appeared.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The obligee child is J. C. C., DOB 00/00/89.

Rebecca L. Pauli, Administrative Law Judge, Office of Administrative Hearings, conducted the hearing. Because there are no material issues of fact, summary adjudication is appropriate. Mr. C.'s appeal is granted. CSSD has not been provided the statutory or regulatory authority to assess the cost of a process server against Mr. C.

II. Facts

The facts are undisputed. The custodian applied for and started receiving public assistance cash grants in July 2006. In anticipation of the obligee reaching 18 years of age and emancipation on August 26, 2007, CSSD wanted to initiate and serve Mr. C. with the Notice of Paternity and Financial Responsibility prior to the obligee's 18th birthday. The Notice of Paternity and Financial Responsibility was dated July 25, 2007. To ensure service before emancipation, in addition to service by mail, CSSD chose to use a process service and incurred \$43 in process service costs. CSSD initiated service by process server on July 26, 2007.² Service by process server was accomplished on July 30, 2007.³

¹ They did receive notice of the hearing as evidenced by the signed and returned "green cards."

² Exh. 4.

³ Exh. 4.

Mr. C. filed a Response to Paternity Action, admitting paternity, on August 22, 2007.⁴ On August 29, 2007, CSSD issued an Order Establishing Paternity and assessing \$43.00 for process server costs.⁵ Mr. C. appealed the cost of the process service. He argued that he “received request for paternity 2-3 days before process server came. Cost of process server was unnecessary. Original request came by regular mail and should have been sufficient.”⁶ No paternity testing was required or requested.

III. Discussion

CSSD moved for summary judgment arguing that it may recover the cost of personal service in this matter. CSSD was asked to provide authority for its position. In its post hearing brief, CSSD argues that in a paternity action it is required by statute to provide service in accordance with Alaska Rule of Civil Procedure 4(d).⁷ Civil Rule 79(a) allows a prevailing party to recover costs that were necessarily incurred in the civil action if it is allowable under Alaska Rules of Court, Administrative Rule 11.⁸ CSSD reasons that it is a tribunal under 15 AAC 125.900 and has as one of its duties, “to establish, enforce, and administer child support obligations....”⁹ As a tribunal with the duty to establish and enforce child support obligations, it uses some of the procedures set out in the Alaska Rules of Court, Administrative Rule 11. CSSD found that Mr. C. was not the prevailing party and as such he is liable for the process server fees “as prescribed in Administrative Rule 11 and Civil Rule 79.”¹⁰

Administrative Rule 11 and Civil Rule 79 address cost recovery by a *prevailing party* in the superior and district courts. They do not provide for recovery of costs by “tribunals.” In any event, the court’s rules of procedure and administration do not govern the allocation of costs in administrative proceedings.¹¹ Therefore, CSSD’s reliance on Administrative Rule 11 and Civil Rule 79 is misplaced and it may not recover the cost of personal service unless it has the authority to do so as set forth in a statute or regulation.

⁴ Exh. 3.

⁵ Exh. 5.

⁶ Exh. 1.

⁷ AS 25.27.165(b).

⁸ Ak. R. Civ. P. 79 (a) & (f)(2).

⁹ AS 25.27.020(a)(4).

¹⁰ Brief Concerning Cost of Service at 2.

¹¹ *State v. Smith*, 593 P.2d 625, 630-31 (Alaska 1979); *See also* Civil Rule 1, Scope of Rules – Construction: “The procedure in the superior court and, so far as applicable, in the district court shall be governed by these rules....”

CSSD as an administrative agency is a creature of statute and has only those powers granted by the legislature.¹² Thus for CSSD to recover the cost of service from a party in a paternity action, it must have statutory authority to do so. Here, CSSD has cited no such authority.

AS 25.27.165(b) requires CSSD to initiate an administrative paternity proceeding by personal service or registered, certified, return receipt mail. AS 25.27.165(i) provides in part: “The agency may recover any costs it pays for genetic tests” 15 AAC 125.261 identifies those genetic testing costs CSSD may assess against the child’s putative father. These costs include the cost of the testing, travel, food and lodging. Costs associated with initiating an administrative paternity action are not included as a cost paid for genetic testing and hence are not recoverable under 15 AAC 125.261. This is especially so when, as here, no genetic tests were requested or ordered. Therefore, CSSD may not assess the cost of personal service against Mr. C.

IV. Conclusion and Order

CSSD has failed to provide statutory authority to support its ability to recover the cost of personal service in a paternity action. Accordingly, CSSD’s September 14, 2007, Motion for Summary Adjudication is denied and Mr. C.’s appeal is granted.

CSSD’s August 29, 2007, Order Establishing Paternity is reversed as to assessing \$43 for process server costs against Mr. C. CSSD’s August 29, 2007, Order Establishing Paternity is affirmed in all other respects, including the establishment of Mr. C.’s paternity of the obligee child, J. C. C., DOB 00/00/89.

DATED this 12th day of December, 2007.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹² See e.g., *CSSD v. Wetherelt*, 931 P.2d 383 (1997) (holding, in part, that CSSD could not disestablish paternity in child support proceedings without express statutory authority to do so); *Amereda Hess Pipeline Corp. v. APUC*, 711 P.2d 1170 (Alaska 1986).

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 31st day of December, 2007.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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