

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

IN THE MATTER OF:)

D. T.)

) OAH No. 08-0032-CSS

) CSSD No. 001104098

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

I. Introduction

On January 24, 2008, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on February 13, 2008. The Obligor, D. T., participated by telephone; the Custodian, A. A. M., did not participate.¹ David Peltier, Child Support Specialist, represented CSSD. The Obligee child is K. A. M. (DOB 00/00/99).

Mr. T. stated, on the record, that he would not oppose CSSD's Motion for Summary Adjudication. Moreover, he was withdrawing his appeal and request for formal hearing. Based on Mr. T.'s non-opposition and withdrawal, CSSD's Motion for Summary Adjudication should be granted.

II. Facts

Mr. T.'s child support obligation for K. was previously set at \$194.70 per month.² The support amount was calculated using a default income figure. CSSD imputed income to Mr. T. at the minimum wage in effect at the time of the order, \$5.65 per hour.

On October 19, 2007, CSSD served a Notice of Petition for Modification of Administrative Support Order.³ Following the review, CSSD issued a Modified Administrative Child Support and Medical Support Order on December 26, 2007, that set Mr. T.'s ongoing child support at the minimum permitted by law, \$50 per month effective November 1, 2007.⁴ Mr. T. appealed on January 17, 2008, requesting that his modification be retroactive to the day his

¹ A telephone call was placed to Ms. M. at the phone number contained in the file. A woman answered the phone and stated that it was a "wrong number."

² Exh. 1, 2.

³ Exh. 4.

⁴ Exh. 5.

daughter was born.⁵ At hearing, Mr. T. stated that he did not oppose CSSD's Motion and was withdrawing his appeal and request for formal hearing.

III. Discussion

CSSD's Motion for Summary Adjudication argues that summary adjudication is appropriate because there are no material issues of fact necessitating a hearing, and CSSD is entitled to judgment as a matter of law. Mr. T. has appealed seeking a retroactive modification of a child support amount. CSSD argues that retroactive modification of a child support order is prohibited by the Omnibus Budget Reconciliation Act of 1986, P.L. 99-509, Section 9103(a) (the Bradley Amendment) and Civil Rule 90.3(h). Mr. T. does not oppose CSSD's motion.

CSSD is correct. The law does not permit retroactive modification of a child support order.⁶ Therefore, CSSD's motion should be granted.

IV. Conclusion

There are no material facts in dispute that can be resolved at a formal hearing, so CSSD is entitled to summary judgment as a matter of law. Thus, in the absence of material issues of fact, CSSD's Motion for Summary Adjudication should be granted, and Mr. T.'s appeal should be dismissed.

V. Order

- CSSD's January 24, 2008, Motion for Summary Adjudication is granted;
- Mr. T.'s appeal is dismissed;
- The provisions of the Modified Administrative Child Support and Medical Support Order of December 26, 2007, remain in effect.

DATED this 15th day of February 2008.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

⁵ Exh. 6.

⁶ However, because CSSD used a default income figure, Mr. T. may be entitled to a default review under 15 AAC 125.121. To prevail Mr. T. must prove the default figure was not an accurate reflection of his income for purposes of calculating child support and that granting the request will not cause an undue hardship on the custodian. 15 AAC 125.121(a) and (c).

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

DATED this 3rd day of March, 2008.

By: Signed _____
Signature
Rebecca L. Pauli _____
Name
Administrative Law Judge _____
Title

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