

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

IN THE MATTER OF )  
 )  
 O. S. ) Case No. OAH-08-0064-CSS  
 ) CSSD Case No. 001147945  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, O. S., appeals an Order Establishing Paternity issued by the Child Support Services Division (CSSD) on January 24, 2008. CSSD moved for summary adjudication. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the motion on March 6, 2008. Andrew Rawls represented CSSD by telephone. Mr. S. did not appear. The child is D. S. (DOB 00/00/06). While there is no dispute that Mr. S. is D.’s biological father, CSSD lacks any basis to charge Mr. S. for the cost of serving process.

**II. Facts**

The facts in this case are not in dispute. The child is currently in foster care. Mr. S. has signed papers to relinquish custody so that the child may be adopted. The Office of Children’s Services conducted genetic testing, which showed a 99.99 percent probability that Mr. S. is the child’s father. Mr. S. does not dispute paternity.

Mr. S. is incarcerated at the Lemon Creek Correctional Facility in Juneau. In order to officially establish Mr. S.’s paternity, CSSD issued a Notice of Paternity and Financial Responsibility. CSSD served Mr. S. with the notice on December 19, 2007, by hiring a private process server to serve him at the Lemon Creek jail. The process server charged a “service fee” of \$45.00, and a “handling fee” of \$27.00, a total of \$72.00.<sup>1</sup>

It is unclear whether Mr. S. responded to the notice by admitting paternity, but he did not dispute paternity. CSSD issued the paternity order on January 24, 2008. The order reads as follows:

**Order Establishing Paternity**  
(Alaska Statute 25.27.165 and Alaska Administrative Code 15:125.226)

IT IS HEREBY ORDERED that O. M. S. is established as the legal father of the above listed child born to C. J.. O. M. S. is also liable to CSSD for \$72.00, which is the cost in this paternity action. CSSD will provide a copy of this order to the State of Alaska Bureau of Vital Statistics if the child was born in Alaska.

<sup>1</sup> Exhibit 2.

The order goes on to recite that the basis for paternity was genetic test results, that the notice was served by process server and that jurisdiction is proper, and that CSSD incurred \$72.00 in process server costs.

### **III. Discussion**

Mr. S.'s appeal reads as follows:

I do not owe any child support because I acknowledge D. S. as my son. However, I signed all adoption papers and followed through with all agreements through the courts. I willingly adopted my son to a better family. I was told a DNA test was mandatory before the adoption could go through. I never questioned him not being my son. I took the paternity test so I could follow through with the best interests of the child. Please refund my money. Thank you. (emphasis are Mr. S.'s)

The facts in this case are not disputed, and there is nothing to be gained by holding an evidentiary hearing. CSSD's motion for summary adjudication is appropriate and should be granted, and the case should be decided based on the written record.<sup>2</sup>

It is perhaps unsurprising that Mr. S. appears to be unclear on the reason he has been charged \$72. The reason for this charge is not to pay for genetic testing or for child support, but to pay someone to carry the notice from CSSD, a state agency, to the Lemon Creek Correctional Facility, another state agency, where Mr. S. is known to reside in the custody of the state. From a practical standpoint, there is no particular reason CSSD could not just mail the notice to the appropriate jail with an enclosed form and self-addressed envelope for the jail supervisor to certify service on the inmate. Like private litigants, however, CSSD is bound by AS 09.05.050:

#### **Sec. 09.05.050. Service of process on state prisoners.**

(a) In a civil action to which a person committed to the custody of the commissioner of corrections is a party or witness, service of process shall be made by delivering a copy of the summons and the complaint or pleadings, together with a form for affidavit of proof of service, to the shift supervisor of the correctional facility in which the person is housed. The shift supervisor shall

(1) immediately hand deliver the summons and complaint or pleadings to the person whose name appears on the summons; and

(2) promptly complete the affidavit of proof of service on the form provided and return it to the party requesting service of process.

(b) A party requesting service of process under this section may locate a person committed to the custody of the commissioner of corrections by contacting the chief classification officer of the Department of Corrections during that officer's regular hours of work.

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<sup>2</sup> 2 AAC 64.250.  
OAH No. 08-0064-CSS

Thus, rather than simply mailing service of process to the facility at which inmates are housed, CSSD is required to either use its own personnel or pay a process server to carry the notice and hand it to the inmate's shift supervisor. This is true even for cases such as Mr. S.'s, when the putative father has always acknowledged paternity and genetic testing has already been completed.

The issue in this case is whether the paternity order is correct in stating that Mr. S. "is also liable to CSSD for \$72.00." The Alaska Supreme Court has addressed the authority of CSSD and other administrative agencies in *Sielak v. Alaska Child Support Enforcement Agency*:

A basic proposition regarding administrative agencies comes from *McDaniel v. Cory*, 631 P.2d 82 (Alaska 1981). In *McDaniel* we stated that "[a]dministrative agencies rest their power on affirmative legislative acts. They are creatures of statute and therefore must find within the statute the authority for the exercise of any power they claim."

In order for CSSD to recover the cost of service from a party in a paternity action, it must be able to "find within the statute the authority for the exercise of any power." CSSD cannot charge anybody the costs of process service unless there is a statute that authorizes it to do so.

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 the 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 have not been listed as a cost of genetic testing. It is hard to imagine how the costs of starting an action could be considered a part of the cost of genetic testing, particularly in a case like this one where somebody else had already paid for the genetic testing to be done, or in a case where the father acknowledges paternity and does not request genetic testing. Service of process is simply a cost of doing CSSD's job, as is the cost of the paper that notices are printed on, the cost of typing notices and orders, and the costs of light and heat used by CSSD's offices. There is no statute that authorizes CSSD to charge putative fathers, or anyone else, for these costs.

Even if process service fees for a paternity action could be considered a cost of genetic testing, the regulation states that fees will not be charged if they "cause undue hardship to the putative father" or are "unfair to the putative father given all of the relevant circumstances in the case." Considering the volumes of money CSSD deals with, from the agency's perspective \$72 may be a trivial fee. But from the perspective of inmates, who do not qualify for PFDs and

usually earn well under a dollar per hour for their labor, \$72.00 is a lot of money. Paying the process server could mean weeks of labor for a typical inmate. This is too much to ask for a service that is of no particular value to a putative father, who would probably have no objection if the law allowed CSSD to mail notices to the shift supervisor instead of paying someone to hand deliver them.

Finally, charging the service process fee would be unfair to the putative father considering all of the relevant circumstances of this case. As Mr. S. points out, he has willingly cooperated with everyone involved in this case from the beginning. He did not dispute paternity, but cooperated with the genetic testing when told it was necessary. He has not tried to evade service or make himself unavailable. Mr. S. is in the custody of the State of Alaska. CSSD and the Department of Corrections are sister state agencies that can easily communicate with each other.<sup>3</sup> Whatever the policy may have been behind the statute requiring personal service to the jail, under these circumstances it is patently unfair to force Mr. S. to pay for the cost of a private licensed process server to drive out to Lemon Creek and hand CSSD's notice of paternity to a guard at the jail.

#### **IV. Conclusion**

Because there are no material issues of fact, summary adjudication is appropriate. Paternity is undisputed, and the portion of the order establishing Mr. S. as D.'s father should be affirmed. There is no legal basis to hold Mr. S. liable for process server costs, and the portion of the order purporting to do so should be reversed.

#### **V. Order**

IT IS HEREBY ORDERED that the portion of the Order Establishing Paternity issued by the Child Support Services Division on January 24, 2008, that states "O. M. S. is also liable to CSSD for \$72.00, which is the cost in this paternity action" is reversed. Mr. S. is not liable to CSSD for any costs, and CSSD shall refund any funds it has collected toward the costs of serving process. All other terms of the order, including that portion establishing Mr. S. as the legal father of D. G. S., are affirmed.

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<sup>3</sup> While first class mail seems the obvious less-expensive alternative to a private process server, there does not seem to be any reason that the statute could not be crafted in such a way as to allow CSSD to email the documents to the shift supervisor, who could then print and serve them to the inmate, returning certificate of service in some electronic fashion such as fax, email, or online digital certification that would comport with the requirements of due process. It should be possible to complete the entire process in a matter of minutes without even the cost of a stamp or envelope, thus saving CSSD and the Department of Corrections time as well as money.

DATED this 1<sup>st</sup> day of April, 2008.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

## 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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of April, 2008.

By: Signed  
Jerry Burnett  
Director, Administrative Services

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