

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

IN THE MATTER OF:)

J. W. B.)

) OAH No. 08-0083-CSS

) CSSD No. 001150294

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

I. Introduction

On February 25, 2008, CSSD filed a Motion for Summary Adjudication arguing that there is no factual dispute and that the appeal filed by the custodian, H. A. L., should be denied as a matter of law. Oral argument on the motion was held on March 7, 2008. Neither Ms. L. nor Mr. B. participated or appeared.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The obligee child is E., DOB 00/00/06.

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

II. Facts

The facts are undisputed. The custodian applied for public assistance benefits on E.'s behalf on May 9, 2007.² Mr. B.'s name was not on E.'s birth certificate, so CSSD began the process of paternity establishment. CSSD sent Notices of Paternity and Financial Responsibility by certified mail to both parties on October 9, 2007.³ Both notices were returned by the U.S. Postal Service marked "unclaimed."⁴ Ms. L. sent CSSD a letter dated October 10, 2007, that requested CSSD close her case because she was no longer receiving public assistance. She included a copy of E.'s birth certificate.⁵ CSSD served the Notice of Paternity and Financial Responsibility on Ms. L. by process server on December 10, 2007, and on Mr. B. on December

¹ Ms. L. received and signed the "green card" for both her and Mr. B.'s notice of the date and time for the hearing.

² Exh. 1 at pg. 3.

³ Exh. 2.

⁴ Exhs. 3-4.

⁵ Exh. 5.

30, 2007.⁶ Neither party responded. CSSD issued an Order Establishing Paternity on January 30, 2008, that established Mr. B.'s paternity of E. and charged him \$43, ostensibly for the cost of personal service.⁷ Ms. L. appealed on February 12, 2008, claiming that Mr. B.'s name was already on E.'s birth certificate and that Mr. B. should not have to pay for information CSSD already possessed.⁸

III. Discussion

CSSD moved for summary judgment arguing that it may recover the cost of personal service in this matter. CSSD argues that Mr. B. is liable for its cost for having to use personal service to serve the notices of paternity and financial responsibility on the parents.

CSSD argues as follows: Mr. B. is liable for public assistance reimbursement, citing AS 25.27.120. In order to collect child support from Mr. B., CSSD had to set up a support order, which it could not do because E.'s birth certificate did not have his father's name on it.⁹ Therefore, CSSD first had to establish paternity and it did so in accordance with AS 25.27.165, which sets forth the procedure to determine a putative obligor's paternity in an administrative proceeding.

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 are not included as a cost paid for genetic testing.

CSSD, as an administrative agency, is a creature of statute and may employ only those powers granted by the legislature.¹⁰ Thus for CSSD to recover the cost of personal 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) allows CSSD to utilize personal service in order to initiate an

⁶ Exhs. 6-7.

⁷ Exh. 8.

⁸ Exh. 9.

⁹ After CSSD filed its Motion for Summary Adjudication, Ms. L. sent a letter dated March 5, 2008, and acknowledged she had made a mistake – Mr. B.'s name was not, in fact, on E.'s birth certificate.

¹⁰ 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).

administrative paternity proceeding, but the cost of service is not recoverable under 15 AAC 125.261. Therefore, CSSD may not assess the cost of personal service against Mr. B.

IV. Conclusion and Order

CSSD has failed to provide statutory authority to support its ability to recover the cost of personal service in this paternity action. Accordingly, CSSD's February 25, 2008, Motion for Summary Adjudication is denied and Ms. L.'s appeal is granted.

CSSD's January 30, 2008, Order Establishing Paternity is reversed as to assessing \$43 for process server costs against Mr. B. The order is affirmed in all other respects, including the establishment of Mr. B.'s paternity of the obligee child, E., DOB 00/00/06.

DATED this 27th day of June, 2008.

By: Signed
Kay L. Howard
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 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 14th day of July, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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