

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

IN THE MATTER OF)	OAH No. 08-0333-CSS
A. M.)	CSSD No. 001149245
)	
_____)	

ORDER GRANTING SUMMARY ADJUDICATION

On July 29, 2008, a hearing was held to consider a Motion for Summary Adjudication of this appeal filed by the Child Support Services Division (Division). A. M., the obligor in this case, did not respond to the motion and did not participate in the hearing.¹ S. D., the custodial parent, participated at the hearing. The Division was represented by David Peltier, 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 is establishing Mr. M.'s child support obligation for his child, M., but the Division first had to establish paternity.

It is undisputed that Mr. M. did not comply with the Division's order to submit to a genetic test that was issued on November 9, 2007. When the Division sent Mr. M. a notice of paternity, he asserted that he could show that he is not M.'s father, but he refused to submit to genetic testing. The Division then issued an Order Establishing Paternity on June 4, 2008. Mr. M. requested a formal hearing.

In his request for a formal hearing, Mr. M. argues that it is his right to refuse genetic testing. Mr. M. asserts that he knows that he is not the father and would not be persuaded otherwise by genetic tests. Mr. M. suggested that other men may be the father of M. and provided the names of two men.

¹ Mr. M. did not provide a phone number for the hearing, as instructed on the Notice of Hearing sent to him, although he signed the mailing receipt for the notice. Mr. M. did not answer at his phone number of record at the time set for the hearing. Ms. D. stated that she thought he might be absent working on a wildland fire as a firefighter.

Mr. M. did not respond to the Division's motion.

The issues raised by Mr. M. in his request for a formal hearing do not preclude summary judgment. Mr. M. has not shown there is an issue of fact that would require an evidentiary hearing to resolve.² This is a default paternity establishment order, which is authorized under Alaska Statute 25.27.165(c), when a man identified by the mother as the father fails to comply with an order to submit to genetic testing.

Under Sec 25.27.165(a), the Division may institute administrative proceedings to determine the paternity of a child born out of wedlock. Under AS 25.27.165(c), if the alleged father denies paternity, he must submit to genetic testing. If he fails to submit to testing, the Division may issue a default order establishing paternity. AS 25.27.165(e) allows an individual who has submitted to testing an opportunity to request a formal hearing to contest the results of genetic testing. An individual who has not submitted to testing is not provided with this opportunity under AS 25.27.165(e).

The facts in case are significantly different from the facts in the Alaska Supreme Court case *Meyer v. State, Department of Revenue, Child Support Enforcement Division, ex rel. N.G.T.*,³ In the *Meyer* case, an alleged father had submitted to a genetic test, and the results of the test were positive. The Alaska Supreme Court overturned a paternity order established by summary adjudication, holding that the alleged father had the right to an evidentiary hearing to attempt to prove that the test results were incorrect. Mr. M., however, refused to comply with the testing order and is therefore subject to a default paternity order as a matter of law. Mr. M. did not assert that he complied with the testing order or claim that there were facts that would excuse his failure to comply. Mr. M. simply refused to comply, then argued that he did not have to submit to testing.

Mr. M. is correct that he can refuse to comply with the Division's order, but the legal consequence of his decision not to comply is that he is now the legal father of M., without the benefit of having received any genetic test results. Mr. M. will now have a duty to pay child

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

³ *Meyer v. State, Department of Revenue, Child Support Enforcement Division, ex rel. N.G.T.*, 994 P.2d 365 (Alaska 1999).

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 21st day of August, 2008.

By: *Signed*
Mark T. Handley
Administrative Law Judge

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