

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

IN THE MATTER OF:)

L. M. D.)

) OAH No. 08-0455-CSS

) CSSD No. 001153752

DECISION AND ORDER

I. Introduction

This case involves the Obligor L. M. D.'s appeal of an Order Establishing Paternity that the Child Support Services Division (CSSD) issued in his case on July 23, 2008. The Obligee child is A., DOB 00/00/04.

The hearing was held on September 16, 2008. Mr. D. did not appear; the Custodian, L. N. H., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 26, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after due deliberation, CSSD's Order Establishing Paternity is affirmed.

II. Facts

The history of this case is as follows: on June 20, 2008, CSSD served a Notice of Paternity and Financial Responsibility on Mr. D.¹ On July 3, 2008, he signed an affidavit acknowledging paternity in the Alaska proceeding and submitted financial information and copies of DNA test results from a child support action in the State of Kentucky.² On July 23, 2008, CSSD issued an Order Establishing Paternity.³ Mr. D. appealed on August 4, 2008, stating he had already submitted financial documentation to CSSD.⁴ On August 27, 2008, CSSD filed a Motion for Dismissal of Mr. D.'s appeal.

The Office of Administrative Hearings ("OAH") sent the parties a notice of the date and time for the hearing by certified mail. Both parties received and signed for their notices on August 29, 2008. Ms. H. participated by telephone but Mr. D. did not appear for the hearing and he could not be located by telephone at either number on record. Because Mr. D. received and

¹ Exh. 1 at pg. 1.

² Exhs. 2-4.

³ Exh. 5.

⁴ Exh. 6.

signed for his notice of the hearing, service of the notice was found to be effective and the hearing was conducted without his participation.⁵

At the hearing, CSSD stated it filed the Motion for Dismissal of Mr. D.'s appeal because he did not contest the agency's Order Establishing Paternity and because the DNA test results he provided indicate his probability of paternity of A. has been determined to be 99.99%.⁶ As a result, CSSD asserted that Mr. D.'s appeal should be dismissed.

Ms. H. testified that the parties did have a child support order in Kentucky but it was terminated because they were living together at the time. She added they also may get back together again.

III. Discussion

Mr. D. filed an appeal of CSSD's Order Establishing Paternity and he received the notice of the date and time set for the hearing. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

Based on the evidence in the record, Mr. D. does not contest the establishment of his paternity of the child A. Rather, more likely than not, Mr. D. used the preprinted appeal form simply to communicate with CSSD that he had already submitted his income information, or, if he intended to file an appeal, that it involved his child support obligation and not his paternity of the child.

In the absence of any testimony or other evidence from Mr. D., there is insufficient evidence in the record to prove that CSSD's Order Establishing Paternity was issued in error.

IV. Conclusion

Mr. D. filed an appeal form but he did not intend to appeal CSSD's Order Establishing Paternity. Mr. D. has not stated he contests paternity of the child A. and in addition he had filed documents indicating his probability of paternity of the child is 99.99%. Therefore, CSSD's Motion for Dismissal should be granted and the Order Establishing Paternity should be affirmed.

V. Order

- CSSD's August 27, 2008, Motion for Dismissal is granted and Mr. D.'s appeal is dismissed;

⁵ "If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department." 15 AAC 05.010(c).

- CSSD's July 23, 2008, Order Establishing Paternity is affirmed.

DATED this 16th day of October, 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 3rd day of November, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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

⁶ See Exh. 2.