

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

IN THE MATTER OF:)
)
K. L. P.) OAH Nos: 08-0500/0501-CSS
) CSSD Nos: 001098412/ 001147269
_____)

DECISION AND ORDER

I. Introduction

K. P. and C. O., parents of A. O. (DOB 00/00/95), have each filed an appeal of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (“CSSD”) on August 22, 2008.

The formal hearing in this matter was held on October 23, 2008, before Administrative Law Judge (“ALJ”) James T. Stanley, of the Office of Administrative Hearings (“OAH”).¹ Ms. P. appeared in person. Mr. O. did not appear at the hearing.² David Peltier, Child Support Specialist, appeared in person for CSSD. Exhibits 1 through 12 were admitted into evidence. The hearing was recorded. The record was closed on November 6, 2008.

Based on the record, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed, with the exception of a minor change in the 2008 modified support amount to \$376 per month for two children and \$278 per month for one child.

II. Facts

A. Background

Ms. P. has two children, A. O., DOB 00/00/95, and B. S., DOB 00/00/01. Both girls were legally adopted by their grandparents in 2008.³ This appeal⁴ addresses Ms. P.’s support obligation for her daughters up to the dates they were adopted.

¹ The hearing was originally scheduled for October 2, 2008. Neither party appeared on October 2, 2008, so the hearing was rescheduled for October 23, 2008.

² The Notice of Assignment and Consolidation Order was first sent to Ms. P. and Mr. O. by certified mail, return receipt requested, on September 18, 2008. Agents for Ms. P. and Mr. O. accepted the certified mail on September 19, 2008. The return receipts (“green cards”) were filed with OAH on September 22, and 25, 2008.

³ See Exhibit 10.

⁴ CSSD Case No. 001098412; OAH No. 08-0500-CSS.

Mr. O. is A.'s biological father and has his own child support case for her,⁵ but he is not the father of B. S., Ms. P.'s younger child.⁶ He was served with notice of this modification action and he filed an appeal of the order for the sole purpose of establishing that he is not B.'s father.⁷ But he did not participate in the hearing and other than filing his appeal, Mr. O. has had no involvement with Ms. P.'s modification. There is no dispute on the paternity issue: all parties agree Mr. O. is not B.'s biological father and that his child support obligation for A. is not connected to Ms. P.'s support obligation for both children. Mr. O.'s appeal should therefore be dismissed.⁸

B. Procedural history

Ms. P.'s child support obligation for A. was set at \$50 per month in September 2000.⁹ Eight years later, on April 2, 2008, CSSD initiated a modification so as to add Ms. P.'s younger child, B., DOB 00/007/01, to the support order for A. and to set a new ongoing child support amount for both children.¹⁰ Ms. P. did not respond to the notice of modification.¹¹

On August 22, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. P.'s ongoing child support at \$364 per month for two children, effective May 1, 2008.¹² In addition, CSSD charged Ms. P. with arrears of \$1,980 for reimbursement for foster care provided to B. from August 1, 2005, through April 30, 2008.¹³ Ms. P. filed an appeal of the modification order on September 5, 2008. She asserted that (1) Mr. O. is not B.'s biological father; (2) Mr. O. had not been A.'s custodian; and (3) A. had been adopted by Ms. P.'s mother, B. M.

Ms. P. called her mother, Ms. M., as a witness at the hearing. Ms. M. stated that she and her husband, L. M., had adopted both A. and B., but she could not remember the specific effective dates of the adoptions. She agreed to provide court documents to corroborate her

⁵ CSSD Case No. 001147260.

⁶ According to Ms. P., B.'s father is J. R. S. Exhibit 7. This decision takes no position as to the identity of B.'s biological father, except to adopt the parties' stipulation that it is not Mr. O.

⁷ OAH No. 08-0501-CSS.

⁸ The parties' appeals were consolidated upon referral to the OAH by CSSD, but essentially Ms. P.'s and Mr. O.'s child support cases are not related.

⁹ Exhibit 1.

¹⁰ Exhibit 3.

¹¹ Pre-hearing brief, p. 1.

¹² The \$364 per month figure is actually the 2007 calculation and apparently was mistakenly put into CSSD's modification order as the ongoing support amount. See Exhibit 5, p. 3. The correct 2008 calculation is in the record: \$376 per month for two children and \$278 per month for one child. Exhibit 5, p. 4.

¹³ Exhibit 4, p. 2.

testimony. The day after the hearing, on October 24, 2008, Ms. M. faxed to CSSD copies of the adoption decrees signed by the court regarding both children and CSSD subsequently forwarded the documents to the OAH. The adoption decrees establish that L. and B. M. adopted A. on June 30, 2008,¹⁴ and they adopted B. on September 29, 2008.¹⁵

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁶ Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established. Child support obligations also may be modified to add another child to an obligor’s child support order.¹⁸ A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁹

In this case, CSSD initiated a modification on April 2, 2008, so as to add Ms. P.’s younger child, B., to her support order for A. and to set a modified ongoing child support amount for both children. Thus, under 15 AAC 125.321(d), Ms. P.’s modified child support order for both girls is effective May 1, 2008.

CSSD calculated the ongoing support amount at \$376 per month for two children and \$278 per month for one child.²⁰ The agency calculated these figures using a 2008 income amount arrived at by doubling her first two quarters of 2008 income to equal one year’s worth of earnings.²¹ These calculations are a correct determination of Ms. P.’s ability to pay modified child support as of May 1, 2008. She is thus liable for \$376 per month for two children for May and June of 2008. A. was adopted on June 30, 2008, so Ms. P. is not liable for support for A. as of July 1, 2008. Ms. P.’s liability then becomes \$278 per month, for B. only, for July, August and September of 2008. B. was adopted on September 29, 2008, so Ms. P. is not liable for support for either child as of October 1, 2008.

¹⁴ Exhibit 10, pp. 2-5.

¹⁵ Exhibit 10, pp. 6-10.

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ AS 25.27.190(e).

¹⁸ 15 AAC 125.340(b).

¹⁹ 15 AAC 125.321(d).

²⁰ *See* n. 11.

²¹ Exhibit 5, p. 4.

In a table format, Ms. P.'s support obligation from the May 1, 2008, effective date of the modification forward would thus look like this:

| <u>Year</u> | <u>Months</u> | <u>Children</u> | <u>Support Amount</u> |
|-------------|---------------|---------------------------------|-----------------------|
| 2008 | May | A., B. | \$376 per month |
| | June | A., B. (A. adopted 00/00/08) | “ |
| | July | B. | \$278 per month |
| | August | B. | “ |
| | September | B. (B. adopted 00/00/08) | “ |
| | October | None | None |

In addition to the May 1, 2008, modified child support amount, Ms. P. is liable for arrears just for her younger child, B., as of August 2005, when the child began receiving foster care services. Ms. P. asserted at the hearing that CSSD used incorrect income information to calculate her child support arrears for B. She provided copies of her tax returns for 2005-2007, which indicate that Ms. P.'s income was \$2,090 in 2005, \$4,987 in 2006, and \$17,006 in 2007.²² CSSD used these same figures to determine Ms. P.'s add-on support amounts for paying support for two children instead of one child for this time period.²³ The result is that Ms. P. owes arrears for B. from August 2005 through April 2008 in the total amount of \$1,980.²⁴

Finally, Ms. P. argued that she did not receive a PFD from 2005 through 2007 because of a felony DWI she received in 2003. CSSD requested that she provide documentation from the PFD Division that she was not entitled to the PFD in those years but Ms. P. did not provide proof that she was not entitled to the dividends. Therefore CSSD correctly calculated Ms. P.'s child support amounts by using each year's PFD in her income.

IV. Conclusion

C. O. is not the biological father of B. S., DOB 00/00/01. All of the parties agree on this issue and there were no other issues raised in Mr. O.'s appeal, so it should be dismissed.

²² Exhibit 9, pp. 8, 21 & 30.

²³ Exhibit 5, pp. 1, 2, 3 & 5.

²⁴ See Exhibit 4, p. 5.

Ms. P. met her burden of proving by a preponderance of the evidence that CSSD's August 22, 2008, Modified Administrative Child Support and Medical Support Order was incorrect. Ms. P. is liable for modified child support of \$376 per month for two children, effective May 1, 2008 through June 30, 2008. A. was adopted on June 30, 2008; so as a result, Ms. P.'s child support is reduced to the one-child amount of \$278 per month, for B. only, effective July 1, 2008. B. was subsequently adopted on September 29, 2008, so Ms. P. is no longer liable for child support for either child as of October 1, 2008.

Ms. P. also is liable for arrearages for B. in the amount of \$1,980 incurred for foster care services between August 1, 2005 and April 30, 2008. Ms. P. provided income information for 2005-2007. A review of this financial information does not support a change in the amount of child support previously ordered, other than correcting for the typographical error discussed in footnote 12. Ms. P. has not met her burden of showing that CSSD's arrearage calculations for B. were in error.

Ms. P.'s child support order should be suspended, effective October 1, 2008.

V. Child Support Order

- A. C. O. is not the biological father of B. S., DOB 00/00/01. All of the parties agree on this issue and there were no other issues in Mr. O.'s appeal, so it is dismissed;
- B. Ms. P. is liable for arrears for B. in the amount of \$1,980 for the period from August 1, 2005, through April 30, 2008;
- C. Ms. P. is liable for modified child support for A. and B. in the amount of \$376 per month for May and June 2008;
- D. A. O. was adopted by B. and L. M. on June 30, 2008, so Ms. P. is no longer liable for A.'s support as of July 1, 2008;
- E. Ms. P. is liable for child support for B. only of \$278 per month for July, August and September 2008;
- F. B. S. was adopted by B. and L. M. on September 29, 2008, so Ms. P. is no longer liable for B.'s support as of October 1, 2008;
- G. Ms. P.'s child support is suspended effective October 1, 2008;

- H. All other provisions of CSSD's August 22, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 23rd day of February, 2009.

By: Signed
James T. Stanley
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 13th day of March, 2009.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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