

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

IN THE MATTER OF:)
V. C. W.)
)
) OAH No. 08-0610-CSS
) CSSD No. 001045847
_____)

ORDER GRANTING SUMMARY ADJUDICATION

On December 3, 2008, the Child Support Services Division (Division) filed a Motion for Summary Adjudication in this appeal, alleging that no material facts are in issue and that it is entitled to judgment as a matter of law. V. C. W. is the obligor in this case, and P. A. C. is the custodial parent. Mr. W. and Ms. C. did not participate in a hearing on the motion.¹

This case is a modification action. Mr. W.'s existing child support for his child, M., was previously set at the minimum amount, \$50 per month. Mr. W. requested a modification of his existing child support for his child, M.²

The Division issued notice of the petition for modification on July 22, 2008.³ Mr. W. did not provide the income information as ordered in the petition.⁴ The Division issued a Notice of Denial of Modification Review on October 28, 2008.⁵ This means that the Division determined that it would not take further action on the modification petition that was issued on July 22, 2008. Mr. W.'s ongoing child support obligation therefore remained at \$50 per month, the amount set in his existing order.

Mr. W. requested a formal hearing.⁶ In his request for a formal hearing, Mr. W. indicated that he was in jail and wanted two child support orders with different case numbers modified.⁷

1 Mr. W. and Ms. C. did not appear or provide a phone number as directed by the notice sent to them.

2 Ex. 1.

3 Ex. 2.

4 Ex. 3.

5 Ex. 3.

6 Ex. 4.

7 Ex. 4.

When one party asks for summary adjudication, a party wishing to have a hearing needs to show that there is a need to have a hearing to prove issues of disputed fact regarding the action being appealed.⁸ Mr. W. did not respond to the Division's motion. Mr. W. has presented no genuine issue of material fact to be litigated regarding the modification action.

The issues raised by Mr. W. do not preclude summary adjudication. The Division has the authority to decline to complete its review of a request for modification when, as in this case, the party requesting the review does not timely provide all of the required income information.⁹

The Division stated at the hearing that it is aware that Mr. W. wants modifications of his other orders. Any questions Mr. W. has about the status of his request should be addressed to his Division caseworker.¹⁰

The Division correctly kept Mr. W.'s support for his child M. at the minimum amount of \$50 per month based on Mr. W.'s continued lack of income due to his incarceration.¹¹ The law requires that child support be set at no less than \$50 per month for each of child, or group of children, Mr. W. has with a different mother.¹²

Child Support Order

The Division's Motion for Summary Adjudication is GRANTED. This case will not be scheduled for formal hearing. The Division's Notice of Denial of Modification Review issued on October 28, 2008, is affirmed.

DATED this 5th day of December, 2008.

By: Signed _____

Mark T. Handley
Administrative Law Judge

⁸ *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990)

⁹ Alaska Regulation 15 AAC 125.316(e).

¹⁰ Alaska Civil Rule 90.3(h)(1).

¹¹ *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 113 (Alaska 1994).

¹² *Wright v. Gregorio*, 855 P.2d 772 (Alaska 1993) & Alaska Civil Rule 90.3(c)(1)(B).

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 31st day of December, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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