

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

IN THE MATTER OF: )  
 )  
A. E. S. ) OAH No. 09-0168-CSS  
 ) CSSD No. 001155991  
\_\_\_\_\_ )

**ORDER GRANTING MOTION  
FOR SUMMARY ADJUDICATION**

On March 25, 2009, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on April 7, 2009. Mr. S. participated by telephone. The custodian is the State of Alaska; the mother, M. M. S., was not served nor did she participate. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD.

This is a paternity case that was initiated as a result of the State taking custody of M.-A., DOB 00/00/08. On November 26, 2008, CSSD served a Notice of Paternity and Financial Responsibility on Mr. S.<sup>1</sup> He responded that he was unsure of paternity so genetic tests were conducted. The results indicate Mr. S.'s probability of paternity of the child is 99.99%.<sup>2</sup> On March 6, 2009, CSSD issued an Order Establishing Paternity.<sup>3</sup> Mr. S. filed an appeal on March 17, 2009. He pointed out that the test results were only 99.99%, not 100% and so he believes paternity was not proven. Mr. S. also alleged that during the approximate time that M.-A. was conceived, his younger brother, G. S., raped M. S., so G. is M.-A.'s biological father and CSSD should conduct paternity tests on him.<sup>4</sup>

CSSD filed the Motion for Summary Adjudication on March 25, 2009. CSSD's motion asserts that genetic test results of 99.99% are sufficient to establish paternity and that CSSD does not have the authority to conduct paternity tests of G. S. because the child's mother did not name G. as a possible father. CSSD requested that the motion for summary adjudication be granted because there are no material issues of fact necessitating a hearing and the agency is entitled to judgment as a matter of law.

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exhs. 2 & 3.  
<sup>3</sup> Exh. 4.  
<sup>4</sup> Exh. 5.

Alaska Statute (“AS”) 25.20.050(d) states that a genetic test with probability of paternity results of 95% or higher creates a “presumption of parentage.” This presumption may be rebutted or challenged only by a showing of “clear and convincing evidence.”<sup>5</sup> In accord with the statute, CSSD’s regulations state that if the genetic test results establish a presumption of parentage under AS 25.20.050(d), the agency will issue an administrative review decision that finds that the named individual is the child's biological father.<sup>6</sup>

The genetic test results conducted in this case show that Mr. S.’s probability of paternity is 99.99%. Mr. S. claimed that his younger brother G. S. raped M. S. so he should be tested. But M. named A., not G., as M.-A.’s father and there are no statements from either M. or G. regarding the claim that G. raped her. All of this evidence, taken together, does not rise to the level of “clear and convincing” evidence that would be sufficient to rebut the presumption of parentage created by the 99.99% genetic test results.

Mr. S. has not rebutted the presumption of paternity and there are no material facts in dispute. Thus, CSSD is entitled to summary judgment as a matter of law. CSSD’s Motion for Summary Adjudication should be granted, and Mr. S.’s appeal should be dismissed.

**THEREFORE IT IS ORDERED:**

- CSSD’s March 25, 2009, Motion for Summary Adjudication is granted;
- Mr. S.’s appeal is dismissed;
- CSSD’s March 6, 2009, Order Establishing Paternity is affirmed.

DATED this 26th day of May, 2009.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>5</sup> *Id.*

<sup>6</sup> 15 AAC 125.222(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 12th day of June, 2009.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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