

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

IN THE MATTER OF:)
)
 T. R. F.) OAH No. 09-0227-CSS
) CSSD No. 001149956
 _____)

ORDER DISMISSING APPEAL

I. Introduction

On April 29, 2009, CSSD filed a Motion for Dismissal in this child support case initiated on behalf of M., DOB 00/00/07. Oral argument on CSSD's motion was held on May 7, 2009 and a status conference was convened on June 3, 2009. Appearances were made by Mr. F.; the custodian, I. R. H.; and Erinn Brian and Andrew Rawls, CSSD's representatives.

Based on the entire record and after careful consideration, CSSD's motion is granted and Mr. F.'s appeal is dismissed.

II. Facts and Proceedings

A. Paternity Establishment

This is an establishment case that was initiated in July 2007 when M. began receiving public assistance benefits.¹ On September 27, 2007, CSSD issued a Notice of Paternity and Financial Responsibility that was served on Mr. F. on December 3, 2007.² He responded that he was unsure of paternity so genetic tests were conducted.³ The results indicate Mr. F.'s probability of paternity of M. is 99.99%.⁴ On January 23, 2008, CSSD issued an Order Establishing Paternity.⁵ Mr. F. did not file an appeal of CSSD's order.

B. Child Support Establishment

On April 30, 2008, CSSD issued an Administrative Child Support and Medical Support Order for Mr. F. to pay support for M. effective July 1, 2008; the order was served on Mr. F. on

¹ Exh. 5 at pg. 2.

² Exh. 1.

³ Exh. 2.

⁴ Ms. H. and M. provided DNA samples on January 8, 2008. Exh. 3 at pg. 2. Mr. F.'s sample, however, was taken on April 26, 2005, for an unrelated proceeding. According to CSSD, the lab calculated the test results in this case from a review of Mr. F.'s DNA analysis from that earlier test. *Id.*

⁵ Exh. 4.

July 8, 2008.⁶ Mr. F. asked for an administrative review on September 29, 2008, specifically requesting a second genetic test.⁷ The record does not indicate how CSSD responded to Mr. F.’s request for an administrative review.

C. Petition for Genetic Testing

Mr. F. filed a Petition for Genetic Testing on January 23, 2009.⁸ On January 26, 2009, CSSD issued an order for both parties to submit to genetic tests.⁹ The results indicate Mr. F.’s probability of paternity of M. is 99.99%.¹⁰ On March 20, 2009, CSSD issued an Administrative Review Decision Regarding Genetic Testing. It reported that the probability of Mr. F.’s paternity of M. is 99.99% and once again found Mr. F. to be M.’s biological father and to have a duty to support the child.¹¹

Mr. F. filed an appeal on April 14, 2009.¹² He claimed, in regard to his child support, that the order creates a financial hardship for him and that having to pay the amount calculated results in manifest injustice to his son who lives with him.¹³ As to his paternity of M., Mr. F. claimed that LabCorp, the company that performed the tests, made a mistake in its analysis because he is not M.’s father. Mr. F. argued that LabCorp is poorly run and that its paternity results are often wrong. In support of his claim, the obligor submitted copies of news articles and online blog entries regarding people who also claim their test results are inaccurate.¹⁴ Mr. F. requested that a testing lab not connected to LabCorp perform a specific test – “Y-STR Male Lineage Testing” – in order to determine whether he is M.’s father.¹⁵

D. Motion to Dismiss

CSSD filed the Motion to Dismiss on April 29, 2009. CSSD’s motion asserts that 1) Mr. F.’s appeal of his administrative child support order is untimely, and 2) the genetic test results

⁶ Exh. 5, Exh. 6 at pg. 2.

⁷ Exh. 6.

⁸ Exh. 7.

⁹ Exh. 8.

¹⁰ Mr. F. provided a sample of DNA material on January 23, 2009. Exh. 9 at pg. 3. The samples that were used to evaluate Ms. H.’s and M.’s portion of the test were the same ones they provided for the earlier test on January 8, 2008. *Id.* See note 4.

¹¹ Exh. 10.

¹² Exh. 11.

¹³ Exh. 11 at pgs. 1-4.

¹⁴ Exh. 11 at pgs. 5-17.

¹⁵ Exh. 11 at pgs. 6 & 18.

have been obtained in this case and that if Mr. F. wants further testing he should seek relief through the courts.

Oral argument on CSSD's motion was held on May 7, 2009, to determine whether Mr. F. would be entitled to a hearing. The parties made legal arguments and gave factual testimony. Essentially, Mr. F. reasserted his claim to have an independent lab not connected to LabCorp perform the Y-STR test. CSSD responded that it is contractually obligated to send its paternity tests to LabCorp, and that the Y-STR test is not done by that company. Following the parties' arguments the administrative law judge directed Mr. F., Ms. H. and M. to submit to a final, current, genetic test of DNA material collected by CSSD at the same time. The parties were informed that further proceedings would be held after the test results arrived. The parties appeared at CSSD the next day to provide DNA samples and the report was received on May 27, 2009. The test indicates Mr. F.'s probability of paternity of M. is 99.99%.¹⁶

On June 1, 2009, OAH staff contacted the parties and both agreed to participate in a status conference at 8:00 a.m. on Wednesday, June 3, 2009. Ms. H. appeared in person; Mr. F., who indicated he would participate again by telephone on June 3rd, did not answer two calls placed to his number at the beginning of the hearing.¹⁷ Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD.

III. Discussion

CSSD requested dismissal because Mr. F.'s appeal of the child support order is untimely, and because he has received three separate genetic tests that establish his paternity of the minor child M. Each issue will be addressed in turn, beginning with his appeal of the child support order.

A. Dismissal

Under Department of Revenue regulations, when CSSD issues an Administrative Child Support and Medical Support Order, a party has 30 days to request an administrative review.¹⁸ The person is not entitled to a formal hearing unless and until CSSD issues an administrative review decision.¹⁹

¹⁶ CSSD's Filing of Mr. F.'s Genetic Test Results at pg. 2.

¹⁷ The second attempt to contact Mr. F. was made on the record.

¹⁸ 15 AAC 05.030(b)(6).

¹⁹ 15 AAC 05.030(i).

In this case, CSSD served an Administrative Child Support and Medical Support Order on Mr. F. on July 8, 2008, for public assistance reimbursement beginning in July 2007. He did not request an administrative review within 30 days, as required by CSSD regulation 15 AAC 05.030(i), so the administrative order became final after 30 days had passed. Mr. F. did not request an administrative review until September 29, 2008, nearly two months too late for him to receive an administrative review. To the extent that Mr. F.'s April 14, 2009, appeal addressed child support issues, technically it is also untimely.

Accordingly, based on the record, Mr. F. is not entitled to a formal hearing regarding his child support order and CSSD's motion to dismiss should be granted. Mr. F.'s appeal of the April 30, 2008, Administrative Child Support and Medical Support Order should be dismissed.

B. Summary Adjudication

The second issue, Mr. F.'s paternity of M., cannot be resolved by way of a simple dismissal. CSSD requested dismissal of Mr. F.'s appeal of the paternity test results. However, a motion for dismissal is more properly filed where peripheral issues such as timeliness prevent a party from being entitled to a hearing. That was the issue raised regarding Mr. F.'s child support order and the motion for dismissal was the appropriate way to request he not be allowed to have a hearing regarding his child support obligation.

In contrast to dismissal is the situation in which CSSD is asserting a party should not be allowed a hearing because there are no facts the administrative law judge could find that would enable him or her to make any changes to the party's support obligation, as in the case of a \$50 per month minimum order. In that situation, a motion for summary adjudication should be filed in which CSSD asserts it is entitled to judgment as a matter of law. CSSD's request that Mr. F. is not entitled to a hearing because he has received three tests showing a probability of paternity of 99.99 % is appropriate for a summary adjudication motion and will be heard as such.

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."²⁰ In accord with the statute, CSSD's regulations state that if the genetic test results establish a presumption of

²⁰ *Id.*

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.²¹

Three separate genetic tests conducted in this case show that Mr. F.'s probability of paternity of M. is 99.99%. All of the test results exceed the 95% or higher rate that creates a presumption of parentage that the appealing party must rebut by clear and convincing evidence, which is a high standard of proof. Mr. F. submitted documents purporting to show that LabCorp tests are unreliable, but the documents do nothing to show that *Mr. F.*'s test results are inaccurate. Indeed, three tests using different DNA samples from the parties and M. show the same results.

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. There are thus no material issues of fact necessitating a hearing in this case and CSSD is entitled to judgment as a matter of law.

IV. Conclusion

Mr. F. is not entitled to a hearing on his child support obligation because his September 29, 2008, request for an administrative review was not timely filed. To the extent that his April 14, 2009, appeal requested a hearing on his child support obligation, that too is untimely. Thus, any appeal regarding his child support obligation should be dismissed.

Mr. F. has not rebutted the presumption of paternity created by three separate genetic tests that show a probability of paternity of 99.99%. Thus, there are no material facts in dispute and on the issue of paternity CSSD is entitled to summary judgment as a matter of law. CSSD's Motion to Dismiss and its implicit Motion for Summary Adjudication should both be granted, and Mr. F.'s appeal should be dismissed.

V. Order

- CSSD's April 29, 2009, Motion to Dismiss is GRANTED as to Mr. F.'s child support obligation;
- CSSD's April 29, 2009, implied Motion for Summary Adjudication is GRANTED as to Mr. F.'s paternity of the minor child M.;
- Mr. F.'s April 14, 2009, appeal is dismissed;

²¹ 15 AAC 125.222(b).

- CSSD's March 20, 2009, Administrative Review Decision Regarding Genetic Testing is affirmed.

DATED this 4th day of June, 2009.

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 22nd 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.]