

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

IN THE MATTER OF)
)
 E. G.) Case No. OAH-09-0391-CSS
) CSSD Case No. 001132624
_____)

DECISION & ORDER

I. Introduction

The obligor, E. G., appeals an Amended Order Establishing Paternity issued by the Child Support Services Division (CSSD) on October 11, 2004. CSSD moved to dismiss the appeal for lack of timeliness. Mr. G. appeared by telephone at a hearing held on August 27, 2009. The custodian, I. K., also appeared by telephone. Andrew Rawls represented CSSD. The child is C. K. (DOB 00/00/02).

Because Mr. G.'s appeal is more than four years late and there are no unusual circumstances calling for waiver of the appeal deadlines, CSSD's motion is granted and the case is dismissed.

II. Facts

CSSD served Mr. G. with a notice of paternity on September 7, 2004. The notice of paternity included an explanation that says, "we believe you may be the father of the children listed above. If you do not respond within 30 days, you could be legally determined to be the father." The explanation encouraged Mr. G. to carefully read the enclosed information and, if he had any questions, to call his caseworker at a phone number provided. The order also explained the procedure for genetic testing, provided forms to return to request genetic testing, and provided two phone numbers to call to arrange genetic testing.

CSSD sent the notice and explanation to Mr. G. by certified mail with restricted delivery. The return receipt contains Mr. G.'s signature in the portion of the form labeled "*COMPLETE THIS SECTION UPON DELIVERY.*" Mr. G. stated that he never received the notice. He expressed an opinion that his signature on the certified mail return receipt only verifies that the mail carrier notified him that he had certified mail waiting for him at the post office.¹ Mr. G. stated that he never went to the post office to pick up the certified mail that was waiting for him. Because the U.S. Postal Service return receipt for restricted delivery certified mail indicates

¹ Because the hearing in this case was for the purpose of considering CSSD's motion, the parties presented oral argument but not sworn testimony.

actual delivery to the named addressee, it is more likely than not that Mr. G. did receive the notice of paternity on September 7, 2004. Mr. G. did not respond to the notice.

CSSD issued an Order Establishing Paternity on October 11, 2004. CSSD mailed a copy of this order, along with a form to appeal the decision, to Mr. G. at the same address at which Mr. G. had signed for receipt of the Notice of Paternity. The order contained a form for appealing the order; Mr. G. did not appeal order at the time.

On February 22, 2006, CSSD served Mr. G. with an Administrative Child Support and Medical Support Order. According to the process server's affidavit, the server delivered a copy of the document at Mr. G.'s address in Seattle to Mr. G.'s "mother and resident therein."² This order states on its first page that "either party has a right to challenge this order by requesting an administrative review. You must make the request in writing and sent it certified mail, return receipt requested. The request for a review must be postmarked within 30 days from the date you received this notice." Mr. G. did not respond.

Mr. G. requested an administrative review of the child support order and appealed the order establishing paternity on July 29, 2009.

III. Discussion

A person wishing to appeal an administrative paternity order must do so within thirty days of the date of the order.³ A person wishing to request administrative review of a child support order must do so within thirty days.⁴ The appeal deadlines may be waived if it appears that strict adherence would work an injustice.⁵

There is no particular interest of justice that requires waiver of the normal appeal deadlines in this case. Mr. G. argues that he did not receive notice of his alleged paternity. At the very least, there is no dispute that Mr. G. was aware that there was a certified letter for him at the post office, and he could have picked it up. CSSD and the custodian cannot be held responsible for the obligor's lack of knowledge when the obligor knowingly declines to receive his mail. In fact, it appears more likely than not that Mr. G. did receive the notice of paternity in 2004 and the administrative child support order in 2006.

While missing an appeal deadline by a few days or even a few weeks might be reasonably overlooked, the delays in this case are measured in years. There are at least three

² Exhibit 3, page 9.

³ AS 25.27.165(e).

⁴ AS 25.27.170(a).

⁵ 15 AAC 05.0303(k).

separate documents that Mr. G. did not respond to. There has been no allegation of any unusual circumstances that prevented Mr. G. from contacting CSSD or responding to the orders.

Mr. G. is not without a remedy. As CSSD points out, Mr. G. may petition the court for an order disestablishing paternity, in which case the court will direct CSSD to do the genetic testing that Mr. G. is asking for. While going to court may sound daunting, especially to someone located in another state, help is available from caseworkers, forms are available online, and the process is not overly burdensome. The principal difference is simply that at this point Mr. G. must take the initiative to start the process and follow up on it.

IV. Conclusion

Mr. G. did not appeal the Administrative Order Establishing Paternity before the appeal deadline. He did request administrative review within the required time period. There are no interests of justice that require waiver of the appeal deadlines. CSSD's Motion to Dismiss should be granted.

V. Order

IT IS HEREBY ORDERED that CSSD's Motion to Dismiss is GRANTED and that this case is DISMISSED. Mr. G. may pursue genetic testing by pursuing disestablishment of paternity through the court.

DATED this 31st day of August, 2009.

By: *Signed* _____
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of September, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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