

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

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|------------------|---|---------------------|
| IN THE MATTER OF |) | OAH No. 09-0444-CSS |
| L. K. B. |) | CSSD No. 001051440 |
| _____ |) | |

DECISION & ORDER ON SUMMARY ADJUDICATION

On September 14, 2009, a hearing was held to consider a Motion for Summary Adjudication of this appeal filed by the Child Support Services Division (Division). L. K. B., the obligor in this case, did not respond to the motion but participated in the hearing. J. Z., the custodian, did not respond to the motion or participate in the hearing. The Division was represented by Andrew Rawls, Child Support Services Specialist.

The Division's Motion for Summary Adjudication in this appeal alleged that no material facts are in issue and that it is entitled to judgment as a matter of law. This case is Mr. B.'s appeal of the Division's order denying his request to modify his ongoing child support obligation to a lower monthly amount. Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. B.'s ongoing child support obligation should remain as set in his existing order.

II. Facts

This case is a modification action.¹ Mr. B. requested a modification of his existing child support order for his child, M. Mr. B. requested that the Division decrease ongoing child support.

The Division issued notice of the petition for modification on February 3, 2009. Mr. B. did provide some income information as ordered in the petition. He provided an affidavit of income showing income of \$15,216 and total deductions from income of \$109,848.00. Mr. B. also filed a copy of his 2008 federal income tax return showing \$6,267 in taxable income. The

Division initially reduced Mr. B.'s ongoing child support order from \$512 to \$231, in an order issued on April 28, 2009, which Ms. Z. appealed.²

At the hearing on Ms. Z.'s appeal, in which Mr. B. did not appear, the Division and Ms. Z. raised questions about the sufficiency and reliability of the income information that Mr. B. had provided to the Division, given his recent conviction for criminal nonsupport case number 3AN-08-0XXXXCR, and his subsequent charge on a probation violation for failing to provide his income information to the court, a condition of his probation.

At that hearing, the Division and Ms. Z. asked that the case should be remanded. After the remand, the Division vacated its modification and issued a Notice of Denial of Modification Review on July 30, 2009. This means that the Division determined that it would not take further action on the modification petition that was issued on April 28, 2009. Mr. B.'s ongoing child support obligation therefore remained at the amount set in his existing order.

Mr. B. requested a formal hearing. In his request for a formal hearing, Mr. B. again asked that his child support be decreased. The Division filed a Motion for Summary Adjudication. With its motion, the Division filed copies of some of the court transcripts from Mr. B.'s jury trial for criminal non-support of his child M., the obligee in this case.

The trial was held on December 18, 2008, less than two months before the petition was issued in this case. Mr. B. was convicted and sentenced on December 22, 2008. Mr. B. was sentenced to thirty days in jail, with 220 days of suspended jail time. At time of the hearing in this appeal, Mr. B. was back in jail serving some of that suspended time for a probation violation. Ms. Z.'s testimony at the earlier hearing was that the probation violation was Mr. B.'s failure to provide the court with accurate income information as ordered.

At the hearing, Mr. B. not dispute that he had failed to provide information regarding this criminal nonsupport conviction to the Division or that the conviction was based in part on evidence that Mr. B. was underemployed and had unreported income. Mr. B. did not assert that there was a significant change in circumstances regarding his earning capacity between the court's verdict and the date that he was require to provide his income information to the

¹ Alaska Civil Rule 90.3(h) governs modification actions.

² OAH No. 09-0352-CSS

Division.

III. Discussion

In order to show that he should have an evidentiary hearing Mr. B., has to show that there are factual matters in dispute regarding the Division's decision not to review his modification request.³ 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.⁴ Put another way, the Division's obligation to complete its review is dependent on an obligor's timely cooperation with the Division in establishing his or her ability to pay ongoing child support. Since he admits that he did not timely provide relevant information regarding his income, Mr. B. admits to facts which show that the Division's order was correct.⁵

Before Mr. B. can receive a reduction in his ongoing child support, he will have to request a new modification. During this new modification action, he will have to provide all his income information to the Division, including information on the income he that failed to report with his filing for this petition. Since the court concluded that Mr. B. was voluntarily unreasonably underemployed, Mr. B. will also have to timely respond to any inquiries that the Division might make about his earning capacity.

IV. Conclusion

I conclude that the Division correctly denied Mr. B.'s request for a modification of his ongoing child support because he failed to timely and accurately respond to the Division's request for income information.

³ *French v. Jadon, Inc.*, 911 P.2d 20, 23 (Alaska 1996).

⁴ Alaska Regulation 15 AAC 125.316(e).

⁵ Recording of Hearing & Alaska Regulation 15 AAC 125.316(e).

V. Child Support Order

The Division’s Motion for Summary Adjudication is GRANTED. The Division’s Notice of Denial of Modification Review issued on July 30, 2009, is affirmed.

DATED this 16th day of September, 2009.

By: Signed
Mark . T. Handley
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 6th day of October, 2009.

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

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