

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

IN THE MATTER OF: )

G. L. A. )

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) OAH No. 09-0610-CSS

) CSSD No. 001059081

**ORDER GRANTING MOTION  
FOR SUMMARY ADJUDICATION**

On November 24, 2009, CSSD filed a Motion for Remand in this child support case. Oral argument on the motion was calendared for December 7, 2009, but the hearing date was vacated because CSSD had already collected DNA materials from the parties for genetic tests. The other party to the case is B. M. B., the custodian of record.

This is a paternity case that was initiated upon the application for child support services from Ms. B. on behalf of D., who is currently fourteen years of age.<sup>1</sup> On September 17, 2009, CSSD served a Notice of Paternity and Financial Responsibility on Mr. A.<sup>2</sup> He did not respond.<sup>3</sup> On October 23, 2009, CSSD issued an Order Establishing Paternity.<sup>4</sup> Mr. A. filed an appeal on November 6, 2009, asserting he is not D.'s father.<sup>5</sup> On November 30, 2009, CSSD filed a notice that genetic materials had been collected and were being tested. As a result, the hearing was vacated to await the results.

On January 20, 2010, CSSD filed a Motion for Summary Adjudication. The motion states that the paternity test results had been received and they indicate Mr. A.'s probability of paternity of D. is 99.99%.<sup>6</sup> CSSD's motion asserts that genetic test results of 99.99% are sufficient to establish a presumption of parentage and since Mr. A. did not offer any argument or evidence to rebut the presumption, that summary adjudication should 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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1 Exh. 1.  
2 Exhs. 2 & 3.  
3 Motion at pg. 1.  
4 Exh. 4.  
5 Exh. 5.  
6 Exh. 6.

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>7</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>8</sup>

The genetic test results conducted in this case show that Mr. A.’s probability of paternity is 99.99%. Mr. A. did not respond to or challenge the test results, therefore there is no “clear and convincing” evidence that would be sufficient to rebut the presumption of parentage created by the 99.99% genetic test results. Since Mr. A. has not rebutted the presumption of paternity and there are no material facts in dispute, CSSD is entitled to summary judgment as a matter of law. CSSD’s Motion for Summary Adjudication should be granted, and Mr. A.’s appeal should be dismissed.

**THEREFORE IT IS ORDERED:**

- CSSD’s January 20, 2010, Motion for Summary Adjudication is granted;
- Mr. A.’s appeal is dismissed;
- CSSD’s October 23, 2009, Order Establishing Paternity is affirmed.

DATED this 4th day of March, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>7</sup> *Id.*

<sup>8</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 22<sup>nd</sup> day of March, 2010.

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

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