

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

IN THE MATTER OF	)	OAH No. 09-0346-CSS
L. S. A.	)	CSSD No. 001152365
	)	
_____	)	

**DECISION & ORDER ON SUMMARY ADJUDICATION**

On July 21, 2009, a hearing was held to consider a Motion for Summary Adjudication of this appeal filed by the Child Support Services Division (Division). L. A., the obligor in this case, did not respond to the motion or participate in the hearing.<sup>1</sup> The children in this case, B., C., D. and E., are in the custody of the State of Alaska. 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 Ms. A.'s appeal of the Division's order denying her request to modify her 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 motion should be granted and its order should be upheld. Ms. A.'s ongoing child support obligation should remain as set in her existing order for the few days between the potential effective date of the modification and the termination of her parental rights.

**II. Facts**

This case is a modification action.<sup>2</sup> Ms. A. requested a modification of her existing child support for her children, B., C., D. and E.<sup>3</sup> Ms. A. requested that the Division decrease her ongoing child support.<sup>4</sup>

The Division issued notice of the petition for modification on February 5, 2009.<sup>5</sup> Ms. A. did not timely provide the income information as ordered in the petition.<sup>6</sup> Ms. A. parental rights

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1 Ms. A. did not appear or provide a phone number prior to the time scheduled for the hearing as instructed by the notice sent to her. A message was left at her phone number of record at the time set for the hearing. Ms. A. called after the hearing and was informed that the Division's motion had been granted.

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

3 Division's Motion.

4 Division's Motion.

5 Division's Motion.

6 Division's Motion.

for B., C., D. and E. were terminated by a court order, effective March 9, 2009.<sup>7</sup> Ms. A. has no obligation to pay ongoing child support for B., C., D. and E. after her parental rights were terminated.

The Division issued a Notice of Denial of Modification Review on May 21, 2009.<sup>8</sup> This means that the Division determined that it would not take further action on the modification petition that was issued on February 5, 2009. Ms. A.'s ongoing child support obligation therefore remained at \$414 per month, the amount set in her existing order.

Ms. A. requested a formal hearing.<sup>9</sup> In her request for a formal hearing, Ms. A. again asked that her child support should be decreased.<sup>10</sup> Ms. A. explained that she was on maternity leave for her seventh child. Ms. A. did not dispute that she had failed to timely provide her income information to the Division.<sup>11</sup> Ms. A. asked the Division to excuse her failure to respond before the deadline because she had been busy with appointments related to her pregnancy.<sup>12</sup> With her request for a formal hearing, Ms. A. provided some income information.<sup>13</sup>

### **III. Discussion**

In order to show that she should have a hearing Ms. A., must show that there are factual matters in dispute regarding the Division's decision not to review her modification request.<sup>14</sup> 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.<sup>15</sup> Since she admits that she did not timely provide the information the Division requested, Ms. A. admits to facts which show that the Division's order was correct.<sup>16</sup>

Furthermore, even if the Division had granted Ms. A.'s request for modification, any change in the monthly child support amount that resulted from a modification would only have changed a few days of Ms. A.'s child support obligation for B., C., D. and E. Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, a modification would be

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7 Division's Motion.

8 Ex. 2.

9 Ex. 3.

10 Ex. 3.

11 Ex. 3.

12 Ex. 3.

13 Ex. 3.

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

15 Alaska Regulation 15 AAC 125.316(e).

effective March 1, 2009, because the petition was served in February of 2009.<sup>17</sup> Because of the order terminating her parental rights, a modification could only have changed Ms. A.'s ongoing child support obligation for the first nine days of March 2009.

#### **IV. Conclusion**

I conclude that the Division correctly denied Ms. A.'s request for a modification of her ongoing child support because she failed to timely respond to the Division's request for income information.

#### **V. Child Support Order**

The Division's Motion for Summary Adjudication is GRANTED. The Division's Notice of Denial of Modification Review issued on May 21, 2009, is affirmed.

DATED this 22<sup>nd</sup> day of July, 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 11<sup>th</sup> day of August, 2009.

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

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

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16 Ex.3 & Alaska Regulation 15 AAC 125.316(e).

17 Alaska Regulation 15 AAC 125.321.