

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

IN THE MATTER OF:)

Q. J. C.)

) OAH No. 10-0227-CSS
) CSSD No. 001140498
)

DECISION AND ORDER

I. Introduction

The obligor, Q. J. C., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on March 27, 2010. The Obligee child is Q., Jr., who is four years of age. The custodian is M. L. B.

The hearing was held on May 19, 2010. Both Mr. C. and Ms. B. participated by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on May 19, 2010.

Based on the record and after due deliberation, CSSD’s Notice of Denial of Modification Review is affirmed. Mr. C. remains liable for child support in the amount of \$193 per month.

II. Facts

A. Background

Mr. C.’s child support obligation for Q., Jr. was set at \$193 per month in November 2006.¹ He requested a modification review on January 15, 2010.² On February 19, 2010, CSSD notified all parties that a modification review had been requested.³ Mr. C. provided financial information.⁴ On March 27, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. C. did not document his income.⁵ He appealed on April 23, 2010, asserting primarily that he had provided the income documents CSSD requested for the review.⁶ Before the hearing, CSSD acknowledged Mr. C. had filed financial documents but that CSSD had misfiled them. The agency prepared a child support calculation of \$173 per month

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

from Mr. C.'s 2009 federal income tax return and asserted that the calculation was not sufficient to warrant a modification of his support order for \$193 per month.⁷

B. Material Facts

Mr. C. is currently attending college in Arizona, studying business management. He chose the school and moved there on February 1, 2010. He was formerly employed at the No Name Restaurant in Anchorage but stated he left there upon being informed the business was going bankrupt. Mr. C. admits he did not wait to find out for sure, which is unfortunate because the restaurant is still in operation. He financed his schooling with student loans and believes he will be able to finish in about two years. Mr. C. said he tried to find work when he arrived in Arizona and even had several interviews but he has not yet obtained employment there.

The obligee, Q., Jr., lives with Ms. B. and her husband. Both of them are working and Q., Jr. currently has medical coverage through his stepfather. Ms. B. stated that the current amount of support Mr. C. is obligated to pay does not even cover Q., Jr.'s daycare copayment.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the requisite 15% change has not been met, CSSD may decline the review.⁹ If the person who requests a modification review does not provide evidence sufficient to review the underlying child support order, CSSD may decline the review.¹⁰ That is what happened in this case, although CSSD subsequently acknowledged that it had misfiled Mr. C.'s income information.

The person requesting the hearing, in this case, Mr. C., has the burden of proving that CSSD's Notice of Denial of Modification Review was issued in error.¹¹

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." The obligor has the burden of proving his or

⁷ Exh. 7.
⁸ AS 25.27.190(e).
⁹ 15 AAC 125.316(e).
¹⁰ *Id.*
¹¹ 15 AAC 05.030(h).

her earning capacity.¹² After Mr. C. presented his testimony at the hearing, CSSD asserted that the obligor is voluntarily underemployed and that its order denying modification should be affirmed.¹³ If a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support amount may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."¹⁴

In cases in which CSSD is claiming voluntary unemployment or underemployment, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."¹⁵ It is also necessary to determine whether the parent's unemployment or underemployment is unreasonable. An integral part of the analysis is whether the parent's lack of employment is a result of "economic factors," as in being laid off, or of "purely personal choices."¹⁶ It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a noncustodial parent.¹⁷

The Alaska Supreme Court further explained the essence of the analysis in *Beaudoin v. Beaudoin*¹⁸ by stating that "the relevant inquiry under Civil Rule 90.3 is . . . whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning." An obligor parent is free to change jobs and careers, but the custodial parent and child should not have to finance that change.¹⁹ The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income."²⁰

Based on the "totality of the circumstances," Mr. C. is voluntarily and unreasonably unemployed and CSSD's request that its denial of modification be affirmed in Mr. C.'s case should be granted. Mr. C. is currently unemployed because of voluntary and unreasonable

¹² *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹³ Exh. 6 at pg. 4.

¹⁴ Civil Rule 90.3(a)(4).

¹⁵ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

¹⁶ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁷ *Kowalski*, 806 P.2d at 1371.

¹⁸ 24 P.3d 523 (Alaska 2001).

¹⁹ *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002).

²⁰ Civil Rule 90.3, Commentary III.C.

actions he undertook. Although he testified that he left No Name restaurant because he had been told the restaurant was going bankrupt, the business is still in operation to this day. It was an unreasonable decision for him – particularly in this difficult economic climate – to leave his employment and his ability to support Q., Jr. If Mr. C. had waited at least until he was laid off by the restaurant, he may have qualified for unemployment benefits at that time. The decision remains unreasonable because Mr. C. does not have any income with which to pay support. Mr. C.’s desire to attend school is laudable, but his son Q., Jr. should not have to finance this choice. Mr. C.’s child support should remain in place.

IV. Conclusion

Mr. C. did not meet his burden of proving by a preponderance of the evidence that CSSD’s Notice of Denial of Modification Review was issued in error. Mr. C. is voluntarily and unreasonably unemployed and the denial of modification should be affirmed. As a result, Mr. C. remains liable for child support in the amount of \$193 per month, pursuant to the Administrative Child Support and Medical Support Order CSSD issued on November 1, 2006.

V. Child Support Order

- CSSD’s March 27, 2010, Notice of Denial of Modification Review is affirmed;
- Mr. C. remains liable for child support of \$193 per month;
- All other provisions of the Administrative Child Support and Medical Support Order that CSSD issued on November 1, 2006, remain in full force and effect.

DATED this 11th day of June, 2010.

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 28th day of June, 2010.

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

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