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

IN THE MATTER OF	)	OAH No. 10-0248-CSS
A. N. W.	)	CSSD No. 001133839
	)	

DECISION AND ORDER

I. Introduction

On June 2, 2010, a hearing was held to consider the appeal of A. N. W., to consider his child support obligation for his child T. C. L., the custodian of record in this case, participated. Mr. W. also participated. The Child Support Services Division (Division) was represented by Andrew Rawls, Child Support Services Specialist.

This case is Mr. W.' appeal of the Division's Denial of Modification of Administrative Support Order, which denied Mr. W.' request for a downward modification of his ongoing child support order for his child, T.. This order was issued on April 10, 2010.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. W.' ongoing child support obligation for T. should remain at $291 per month.

II. Facts

This case is a modification action.[1] The Division had originally denied Mr. W.' request for modification review because the Division determined that there would not be a 15% change in Mr. W.' ongoing child support amount based on Mr. W.' earning capacity. Mr. W.' current ongoing child support is set at less than minimum wage full-time employment, because Mr. W. was working seasonally and on an on-call basis for a hotel when his child support was set after a formal hearing in 2005.

Mr. W. requested a formal hearing. In his request for a formal hearing, Mr. W. explained that he is unemployed. At the hearing, Mr. W. had trouble focusing on the issue of his child

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

support obligation. Mr. W. explained his concerns about the court custody order, and a court judgment for him to pay his share of day care expenses. Mr. W. testified that he is unemployed because he was laid off.

Ms. L. then testified that Mr. W. had left Alaska because he is wanted by the Anchorage police for questioning in a murder investigation. Mr. W. did not attempt to refute Ms. L.'s testimony that he left Alaska to avoid police questioning. Mr. W. admitted that he does not have any disabilities that prevent him from working full-time.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. W., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.[2] At the hearing, Mr. W. did not show that he could not earn an income at least equivalent to full-time minimum wage employment.[3] Mr. W. did not explain how he has been supporting himself since has been on the run and avoiding the police. Although Mr. W. testified that he is living with his grandmother in Anchorage, Ms. L. testified that her understanding is that Mr. W. is currently in Las Vegas. Mr. W. did not attempt to refute this testimony.

In this case it is appropriate to impute income. Mr. W. is probably not reporting all his income. Mr. W. did not provide any information about how he has been supporting himself.

When a parent with a child support obligation makes an accurate determination of his or her income impossible, income must be imputed to calculate the child support obligation. The criteria used to estimate the proper amount of income to impute are the same as those used in a case where the noncustodial parent is voluntarily and unreasonably unemployed or underemployed. Rather than determining the parent's actual income, the parent's earning capacity is used to estimate the parent's potential income.[4]

Income can also be imputed to an obligor in cases of unreasonable voluntary underemployment.[5] The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional

[2] Alaska Regulation 15 AAC 05.030(h).
[3] Recording of Hearing.
[4] *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002).
[5] Alaska Civil Rule 90.3(a)(4).

advancement.[6] On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.[7]

Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.[8] The custodial parent and the children should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.[9] The Alaska Supreme Court has indicated that the circumstances surrounding an obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.[10]

At the hearing, Mr. W. was primarily concerned about custody and the court judgment against him for day care expenses. Mr. W. did not show that he is not or will not be able to earn an income at least equal to that of full-time employment paying minimum wage. This amount of income, however, would result in less than a 15% increase in his child support. Reducing one's reported income to avoid contact with the police who are seeking assistance in a criminal investigation is not a reasonable lifestyle choice that would justify a reduction in child support. If Mr. W. is not employed, then he is unreasonably voluntarily underemployed. The evidence shows that he could earn a wage equivalent to the one on which his child support was based in 2005.

IV. Conclusion

I conclude that the Division correctly denied Mr. W.' request for a downward modification of his ongoing child support.

V. Child Support Order

The Division's Notice of Denial of Modification Review issued on April 10, 2010, is

[6] *See Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).
[7] *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).
[8] *See Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).
[9] *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987).
[10] *See Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

affirmed.

DATED this 14th day of June, 2010.

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 9th day of July, 2010

By: *Signed Terry L. Thurbon for*
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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