

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

IN THE MATTER OF:)
)
D. J. C.) OAH No. 10-0267-CSS
) CSSD No. 001039857
_____)

REVISED DECISION AND ORDER

I. Introduction

The custodial parent, P. L. M., appealed a Modified Administrative Child Support and Medical Support order issued on April 10, 2010. The obligor is D. J. C. The obligee child is E. Z. T., who is seventeen years old.

A hearing was held on June 24, 2010. Ms. M. and Mr. C. both appeared in person and represented themselves. The Child Support Services Division (CSSD) was represented by Child Support Specialist Andrew Rawls.

As discussed below, Mr. C.'s child support obligation should remain at \$432 per month.

II. Facts

A. Background

Mr. C.'s child support obligation was set at \$432 per month on August 28, 2007.¹ Mr. C. did not receive notice of this obligation until December of 2007.² A Notice of Petition for Modification of Administrative Support Order was mailed to both parents on September 9, 2009.³ On April 10, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order.⁴ This order set Mr. C.'s support obligation at \$255 per month effective October 1, 2009. This amount was based on an assumption that Mr. C. could earn the Alaska minimum wage of \$7.75 per hour.⁵

¹ Exhibit 1.
² This and other factual findings are based on Mr. C.'s testimony unless otherwise noted.
³ Exhibit 2.
⁴ Exhibit 3.
⁵ Exhibit 3, page 4.

Ms. M. appealed that decision.⁶ She asserts that Mr. C. is willfully unemployed. She also asserts that he has disbursed assets to others to keep them concealed from CSSD.

After the initial proposed decision was issued, Ms. M. and CSSD both filed proposals for action. On behalf of the Commissioner of Revenue, the Deputy Commissioner directed that Mr. C.'s imputed income be based on his prior occupation. This decision is revised to reflect that change and replaces the prior proposed decision issued on June 29, 2010.

B. Material Facts

Mr. C. was earning \$14.96 per hour for A. B. Co. His last day of work was April 19, 2008. He testified that he left this job voluntarily in order to help build two cabins that he had promised to work on. One was for a friend, and the other was on family land. Mr. C. further stated that he had been promised by the company that he could come back to work once he had completed the cabins. Unfortunately, A. B. did not re-hire him when he asked to return.

Mr. C. was not paid for the work on the cabins, and has not been able to find any other paid work since his job with A. B. In addition to applying at television stations, he has looked for construction work and restaurant work without success.

Mr. C. previously owned 5 acres of land near Glennallen. In 2007, when he realized that he could not afford the payments, he transferred the property to his mother who also took over the payments for that land. He has been a gold prospector in the past, but has not earned much money from this in over seven years. Three years ago, his gold prospecting equipment was stolen. He owns four vehicles; a truck, an inoperable van used for storage, a 1970 Thunderbird, and a 1971 Mustang, both in need of restoration.

Mr. C. receives cash assistance from both his mother and his sister. He also has been selling various assets that he has accumulated in order to support himself.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support

⁶ Exhibit 4.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

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 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.⁹ Finally, the person appealing CSSD’s decision has the burden of demonstrating that the decision is incorrect.¹⁰

At the start of the hearing, Mr. C. questioned whether he needed to have a lawyer. He was certainly entitled to have a lawyer represent him. He was not required to have a lawyer, however, and he was not entitled to a continuance in order to hire one. Mr. C. had prior notice of the hearing, and had sufficient opportunity to make that decision in advance of the hearing date. While a lawyer might have helped either party in this case, Mr. C. demonstrated that he was fully capable of presenting evidence and argument in his favor.

Child support may be calculated based on potential income if a parent is voluntarily and unreasonably unemployed or underemployed.¹¹ Mr. C. voluntarily quit his job with A. B. At the time he quit, he knew that he had a child support obligation in the amount of \$432 per month. Although it is understandable that he wanted to fulfill his prior promise to work on the two cabins, he had an overriding obligation to provide financial support for his son. While A. B. may have promised to re-hire Mr. C., it was unreasonable of him to put his son’s financial security at risk based on that promise. This is especially true since Mr. C. does not have a high school diploma. He knew or should have known that someone without a diploma would have fewer employment opportunities. Accordingly, Mr. C. is voluntarily and unreasonably unemployed.¹²

The next question that must be considered is the amount of Mr. C.’s potential income.

[T]he agency will determine the parent’s potential income under 15 AAC 125.020(b) based on the parent’s work history, qualifications, and job opportunities. The agency will, in its discretion, also impute potential income for non-income or low income producing assets.^[13]

⁹ 15 AAC 125.321(d).

¹⁰ 15 AAC 05.030(h).

¹¹ Civil Rule 90.3, Commentary III.C; 15 AAC 125.060.

¹² Although he testified that he has looked for other work, the evidence in the record does not show that he has made diligent efforts to find employment.

¹³ 15 AAC 125.060(a).

Mr. C.'s work history shows that he can earn as much as \$14.96 per hour,¹⁴ and that is the amount he was earning when he unreasonably left his last job. This results in an annual income of \$31,116.80 and a child support obligation of \$447 per month.¹⁵ Because this is less than a 15% change from the prior support obligation, there is no material change in circumstances related to the child support calculation and, therefore, no basis to modify the prior order.

Ms. M. also asserted that additional income should be imputed to Mr. C. based on other assets. She suggests that the land he transferred to his mother should be treated as his, and that this land is capable of producing income. Even assuming this land is his to sell, selling the property would not be income for child support purposes.¹⁶ Converting an asset into cash does not create income; though it does free up cash that could be invested or used in other ways to create income. If Mr. C. sold this property, however, he would have to pay rent since he would no longer be able to live on that property. There is also insufficient evidence in the record to show that Mr. C. could earn significant income from that property in other ways. Thus, this is not a case where discretion should be exercised to impute potential income from this non-income producing property.

Similarly, if Mr. C. were to sell his vehicles and invest the resulting cash, the amount of income produced would not likely be significant. Again, this is not a case where discretion should be exercised to impute potential income from these vehicles. There may come a time when he needs to sell these vehicles to keep current with his child support obligation, but the issue in this case is limited to setting the correct monthly support obligation. How he meets that obligation is not CSSD's or Ms. M.'s concern, as long as he does meet it.

Ms. M. also requested subpoenas for the DMV to obtain information about Mr. C.'s vehicles and for the title company to obtain information about the transfer of property to his mother.¹⁷ There is no dispute in this matter that Mr. C. owns these vehicles or that he transferred property from his name to his mother. Because they are not in dispute, proving those facts with additional evidence is unnecessary. Thus, the request for these subpoenas is denied.

¹⁴ Exhibit 5, page 4.

¹⁵ Exhibit 6. \$14.96 per hour at 40 hours per week for 52 weeks results in an annual income of \$31,116.80.

¹⁶ This decision makes no ruling as to whether the transfer of the property to his mother was in any way improper. This decision focuses on Mr. C.'s income and earning capacity and not on whether he has in any way attempted to hide assets to keep them from being used to pay current or past child support amounts.

¹⁷ 15 AAC 05.030(b)(2) authorizes the issuance of subpoenas.

IV. Conclusion

Mr. C. is voluntarily and unreasonably unemployed. Accordingly, it is appropriate to impute income to him at the rate he was earning when he left his prior job. Because this does not result in at least a 15% change in the amount of his child support obligation, the prior support order should not be modified.

V. Child Support Order

The provisions of CSSD's Administrative Child Support and Medical Support Order dated August 28, 2007 remain in full force and effect.

DATED this 13th day of August, 2010.

By: Signed
Jeffrey A. Friedman
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 16th day of August, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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