

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

IN THE MATTER OF: )

N. A. B. )

) OAH No. 10-0440-CSS

) CSSD No. 001092545

**DECISION AND ORDER**

**I. Introduction**

The obligor, N. A. B., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 13, 2010. The obligee child is J., who is fourteen years old. The custodian is A. A. S.

The formal hearing was held on September 16<sup>th</sup> and October 28<sup>th</sup> of 2010. Mr. B. appeared in person; Ms. S. appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 17, 2010.

Based on the record as a whole and after careful consideration, Mr. B.'s child support is modified to \$563 per month for one child, effective April 1, 2010.

**II. Facts**

*A. History*

Mr. B.'s child support obligation for J. was set at \$668 per month in February 2007.<sup>1</sup> Ms. S. requested a modification review on February 16, 2010.<sup>2</sup> On March 4, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order, but Mr. B. did not respond.<sup>3</sup> On August 13, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B.'s ongoing child support to \$1088 per month, effective April 1, 2010.<sup>4</sup> Mr. B. appealed on August 26, 2010, asserting primarily that he is self-employed and his income is not consistent throughout the year.<sup>5</sup>

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3; Pre-hearing Brief at pg. 1.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5.

*B. Material Facts*

Mr. B. is self-employed and operates D. P. W. LLC, a septic company. He operates only one collection truck and has no employees. He uses a software program to keep track of his income and expenses, but Mr. B. has his federal income tax returns prepared by a professional.<sup>6</sup>

In 2009, Mr. B. reported gross income of \$73,603 from his corporation, of which \$36,237 was net income.<sup>7</sup> Adding the current PFD amount of \$1,281 to that figure results in total annual income from all sources of \$37,580.<sup>8</sup> When this figure is inserted into CSSD's online child support calculator, it results in a child support amount of \$563 per month for one child.<sup>9</sup> This figure is 15.7% less than the child support amount entered in Mr. B.'s case in February 2007.<sup>10</sup>

Mr. B. has had health insurance for J. in place since at least August 2008.<sup>11</sup> On October 28, 2010, he opened an IRA account and apparently can contribute up to 20% of his income.<sup>12</sup> The legal effect of this IRA will be discussed below.

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>13</sup> 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 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.<sup>14</sup>

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 Rule does not have a specific formula for determining the income of a self-employed Obligor, but the Commentary to the Rule does provide this guidance:

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<sup>6</sup> See Mr. B.'s 2009 tax return, filed September 16, 2010, which will be marked as Exhibit 13.

<sup>7</sup> Exh. 9 at pg. 7.

<sup>8</sup> Exh. 12.

<sup>9</sup> *Id.*

<sup>10</sup>  $\$563 \div \$668 = .842 - 1.00 = 15.8\%$

<sup>11</sup> Exh. 20 at pg. 3.

<sup>12</sup> Exh. 20 at pg. 2.

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> 15 AAC 125.321(d). In this case, the notice was issued on March 4, 2010, so the modification is effective as of April 1, 2010. See Exh. 3.

Self Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.<sup>[15]</sup>

Mr. B.'s child support was set at \$668 per month in 2007, based, it appears, on wages he received from one or more employers.<sup>16</sup> After the modification was requested Mr. B. did not supply current income. As a result, CSSD calculated his modified child support from "mean annual" income of \$86,560 indicated for first-line supervisors and managers in the construction trades that CSSD obtained from an online government source.<sup>17</sup> The annual income figure resulted in a child support amount of \$1,088 per month.<sup>18</sup>

Mr. B. met his burden of proving that the above figure is incorrect, essentially because he is self-employed, not someone else's employee, as a first-line supervisor or manager would be. The custodian is correct that Mr. B. failed to cooperate with CSSD when this modification was initiated, but that lack of cooperation does not justify using incorrect income information for him.

The custodian is frustrated and resentful of Mr. B. due to his apparent taunting behavior.<sup>19</sup> But nonetheless, the preponderance of the evidence is that his net income from the septic company is as stated in his tax return, \$36,237 and that this income figure results in a correct child support amount of \$563 per month. Mr. B. filed a letter indicating he had recently opened an IRA, but he shouldn't receive the deduction at this time. He needs to show a much

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15 Civil Rule 90.3, Commentary III.B.

16 See Exh. 1 at pg. 6.

17 Exh. 15 at pg. 1.

18 Exh. 4 at pg. 6.

19 On November 5, 2010, Ms. S. filed a statement alleging Mr. B. had been harassing her. She copied the substance of 26 text messages she claimed he sent her. See Exh. 19. One such message from him was quoted as saying in part: "I love the laws that protect small companies from people like you...Get a job cause your [sic] not going to live off me anymore and it's not my fault CSSD can't do their job . . ." If these messages are, in fact, from Mr. B., they are troubling, certainly, but they may also be just an attempt to pester Ms. S.. In any event, there is insufficient evidence in these alleged messages to alter Mr. B.'s child support calculation. On the other hand, however, Mr. B. should understand that if these messages are from him, they may be sufficient to deny a future modification on the basis of voluntary underemployment.

longer history of documented payments before being entitled to an additional deduction from his income for a voluntary payment into retirement, which would be limited to 7.5% of his income per annum, even if he pays more than that into his IRA.<sup>20</sup>

#### **IV. Conclusion**

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's August 13, 2010, Modified Administrative Child Support and Medical Support Order was incorrect. CSSD's calculation has been revised based on Mr. B.'s 2009 federal income tax return and his child support is now correctly calculated at \$563 per month. The corrected calculation should be adopted.

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

- Mr. B. is liable for modified child support in the amount of \$563 per month, effective April 1, 2010, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 13, 2010, remain in full force and effect.

DATED this 16<sup>th</sup> day of December, 2010.

By: *Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>20</sup> Civil Rule 90.3(a)(1)(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 3<sup>rd</sup> day of January, 2011.

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

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