

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

IN THE MATTER OF:)
)
 F. E. G.) OAH No. 10-0495-CSS
) CSSD No. 001137866
_____)

DECISION

I. Introduction

The custodian, A. R. K., disputes the Notice of Denial of Modification Review issued on September 16, 2010 (Notice). Modification is appropriate where there is a material change in circumstance. The Notice found no material change in circumstance and Ms. K.'s petition for modification was denied.

A formal hearing was held October 28, 2010. The obligor, F. E. G., and Ms. K. participated by telephone. Child Support Specialist Andrew Rawls represented CSSD. The children are L., M., and N., all six years of age. Using Mr. G.'s most current income information, there has not been a presumptive material change in circumstances and CSSD's Denial of Modification Review should be affirmed.

II. Facts

Ms. K. believed Mr. G. was earning \$3,000 per week and requested a modification review thinking the children were entitled to increased child support.¹ CSSD served a Notice of Petition on July 24, 2010. Mr. G. did not provide income information and CSSD issued its Notice of Denial on September 16, 2010.² Ms. K. appealed³ Post hearing Mr. G. provided his most recent pay stub. Using this current information CSSD prepared an updated calculation pursuant to Civil Rule 90.3. This calculation resulted in a child support amount of \$790 per month for three children.⁴

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁵ Civil Rule 90.3(a)(1) provides that an obligor's child support amount be calculated based on his or her "total income from all sources." Because child support is based on annual income, temporary periods of unemployment do not negate the support obligation. Child support is

¹ K. Testimony.

² Exh. 4.

³ Exh. 5.

⁴ Exh. 9 and 10.

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

calculated based on “the income which will be earned when the support is to be paid”—that is, actual or potential *future* income.⁶ The obligor has the burden of proving his or her earning capacity.⁷ Here, Mr. G. has met that burden through his most recent paystub and Department of Labor records. Ms. K. petitioned because she was told Mr. G. was making \$3,000 per week. However, the only evidence she had to support her assertion was her testimony. Ms. K. could not recall how she obtained this information. Ms. K. was forthright and did not embellish. However, her testimony, when weighed against Mr. G.’s reported earnings, is insufficient to establish Mr. G.’s anticipated earnings.

In this case, the best estimate of future income is Mr. G.’s earnings in 2010. As explained by CSSD in its second submission to the record, CSSD’s calculation includes all earnings by Mr. G. reported to the Alaska Department of Labor on his behalf plus Unemployment Insurance benefit distributions. “CSSD finds no indicators that Mr. G. will find other employment during 2010.”⁸ Moreover, Mr. G.’s recent application for unemployment was denied.⁹ Using his most current income figures, CSSD calculated Mr. G.’s total income for 2010 to be \$34,228.20. After accounting for the standard deductions, this results in an adjusted annual income of \$28,731.60.

Under Civil Rule 90.3, the amount of adjusted annual income results in monthly child support payment of \$790 for three children. Because the newly calculated child support payment was less than a 15% change from the prior support amount, child support calculated using this income figure does not result in a material change in circumstances.¹⁰ As a result, his child support obligation should remain as established in the January 22, 2010, Order.

The parties were provided an opportunity to object to CSSD’s submission and informed that if they did not exercise their right to object, a child support order based on CSSD’s submission may be entered.¹¹ Neither Mr. G. nor Ms. K. objected.

⁶ Civil Rule 90.3 Commentary, Part III-E.

⁷ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

⁸ CSSD’s Second Submission to Record.

⁹ *Id.*

¹⁰ “A material change in circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order.” Civil Rule 90.3(h)(1).

¹¹ This was explained to the parties at the hearing and in the October 26, 2010 post hearing scheduling order.

IV. Conclusion

Ms. K. has not met her burden of proving CSSD’s decision to deny her request for modification review was in error. Therefore, CSSD’s Notice of Denial of Modification Review should be affirmed.

V. Order

CSSD’s Notice of Denial of Modification Review is affirmed. Ms. K.’s appeal is dismissed.

DATED this 20th day of December, 2010.

By: Signed
Rebecca L. Pauli
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 7th day of January, 2011.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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