

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

IN THE MATTER OF:)

B. S. K.)

) OAH No. 11-0008-CSS

) CSSD No. 001161556

DECISION AND ORDER

I. Introduction

The obligor, B. S. K., appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on December 15, 2010. The obligee child is A., 2. The other party is A. C. R.

The hearing was held on January 24, 2011. Mr. K. participated by telephone; Ms. R. appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Notice of Denial of Modification Review is affirmed; Mr. K. remains liable for child support of \$504 per month, as set forth in the Amended Administrative Child and Medical Support Order dated August 5, 2010.

II. Facts

A. Background

Mr. K.' child support obligation was set at \$504 per month for one child in August 2010.¹ He requested a modification review on October 11, 2010.² On October 13, 2010, CSSD notified the parties that a modification review had been requested.³ Mr. K.' employers provided income information.⁴ On December 15, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that a child support calculation using his income did not result in a 15% change such that a modification could be issued.⁵ Mr. K. appealed on January 5, 2011, asserting the support amount is incorrect and a custody action is pending.⁶

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

B. Material Facts

In 2008 and 2009, Mr. K. was employed as a contract specialist by the B. Corporation,⁷ where he earned \$33,132.80 in 2009.⁸ He was laid off in October 2009,⁹ and in September 2010 began work for the S. F. as an Administrative Support III paid at \$15.29 per hour.¹⁰ In the fourth quarter of 2010 Mr. K. earned a total of \$8,606.47 working for the foundation.¹¹ Mr. K. has a high school diploma and a Microsoft Certification.¹²

The hearing in this appeal was held on January 24, 2011. Mr. K. testified that he was going back to school full-time pursuing an AA degree in Applied Science at the Career Academy. He said he would finish with that in August 2011 and then go on to get his BS in Applied Science by the end of 2011. He anticipated that eventually he would be able to earn \$32 per hour. Mr. K. explained that while he was in school he would be supporting himself on unemployment benefits, food stamps and heating assistance, and that he would be entitled to placement assistance from the Career Academy. He said he could not afford to work part-time during school.

At the close of the hearing CSSD was directed to submit documentation from the Alaska Department of Labor and Workforce Development regarding the reasons Mr. K.' employers gave for his termination of employment at each place of work. CSSD's representative filed an affidavit that states Department of Labor records show Mr. K. was laid off by the B. Corporation in October 2009, and that Mr. K. voluntarily quit his job with the S. F. on January 27, 2011, three days *after* the formal hearing in his appeal.¹³

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ 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 newly calculated child support

⁷ Except where indicated, the facts are taken from Mr. K.' testimony.

⁸ Affidavit of Erinn Brian, received March 3, 2011, marked by the undersigned as Exh. 10.

⁹ Exh. 4 at pg. 1.

¹⁰ Exh. 4 at pg. 2.

¹¹ *Id.*

¹² Testimony of Mr. K.

¹³ Exh. 10 (emphasis added).

¹⁴ AS 25.27.190(e).

amount does not equal a 15% change from the existing order, CSSD is not required to modify the obligor parent's support order. That is what happened in this case. CSSD calculated a child support amount from Mr. K.' most recent income information but the resulting figure did not result in a 15% change in his current child support so CSSD denied the modification.¹⁵

As the person who filed the appeal in this case, Mr. K. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.¹⁶

Mr. K.' testimony that he was returning to school, in addition to the evidence from the Alaska Department of Labor that Mr. K. left his job at S. F. *after* the formal hearing raises the issue of voluntary unemployment. 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."¹⁷

In cases in which voluntary unemployment becomes an issue, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."¹⁸ 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."¹⁹ 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.²⁰

The Alaska Supreme Court further explained the essence of the analysis in the case of *Beaudoin v. Beaudoin*²¹ 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

15 Exh. 5 at pgs. 1-2.

16 15 AAC 05.030(h).

17 Civil Rule 90.3(a)(4).

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

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

20 *Kowalski*, 806 P.2d at 1371.

21 24 P.3d 523 (Alaska 2001).

the custodial parent and child should not have to finance the obligor parent's employment and lifestyle choices.²² Tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income."²³

Based on the totality of the circumstances presented in this appeal, CSSD correctly denied Mr. K.' request for a modification. Mr. K. is voluntarily and unreasonably unemployed. First, he voluntarily left a job earning \$15.29 per hour to attend school, and second, this decision was unreasonable because he made no plans for continuing to support his daughter. Alaska law is clear that a parent's duty to support his or her children takes priority over other debts, obligations and lifestyle decisions.²⁴ Mr. K. is free to take classes for the purpose of improving his education, but he is not free to make choices that suddenly deprive A. of support. A parent's duty to support his or her children is a very real obligation.²⁵ Mr. K. will most likely have to return to the workforce or make other arrangements for paying his support obligation if he stays in school.

IV. Conclusion

Mr. K. did not meet his burden of proving that CSSD's Notice of Denial of Modification Review was issued in error. Mr. K. is voluntarily and unreasonably unemployed and his child support order for A. should not be modified because he quit his job. CSSD's denial of his request for modification should be affirmed.

V. Child Support Order

- The December 15, 2010, Notice of Denial of Modification Review is affirmed;
- Mr. K. remains liable for child support for A. of \$504 per month;

DATED this 11th day of April, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

²² *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002).

²³ Civil Rule 90.3, Commentary III.C.

²⁴ *See Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

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 29th day of April, 2011.

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

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