

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

IN THE MATTER OF )  
R A D )  
 )  
 )  
\_\_\_\_\_ )

OAH No. 11-0017-CSS  
CSSD No. 001163776

**DECISION AND ORDER**

**I. Introduction**

This case is R A D’s appeal of the order establishing his child support obligation for his child, J. This order was issued by the Alaska Child Support Service Division (Division). On February 8, 2011, a formal hearing was held to consider Mr. D’s appeal.<sup>1</sup> The custodial parent, X M, participated in the hearing. Mr. D also participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on February 18, 2011.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the amounts set in the Division’s Amended Administrative Child and Medical Support Order should be adjusted in accordance with the Division’s latest calculations, which include the correct deductions for Mr. D supporting children of other relationships.

**II. Facts**

The Division initiated this child support order because it received a petition under the Uniform Interstate Family Support Act (UIFSA) from the State of Utah dated December 1, 2010.<sup>2</sup>

Mr. D’s paternity of J was established after genetic testing in an administrative paternity order issued on April 6, 2010 that was not appealed.<sup>3</sup> Ms. M was married to someone other than Mr. D when J was conceived and when she was born. J was conceived in Alaska.<sup>4</sup>

The Division issued an Administrative Child and Medical Support Order on September 24, 2010.<sup>5</sup> Mr. D requested an administrative review.<sup>6</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibits 3-5.  
<sup>4</sup> Exhibit 1 & Recording of Hearing.  
<sup>5</sup> Exhibit 6.  
<sup>6</sup> Exhibit 7.

The Division issued an Amended Administrative Child and Medical Support Order on December 2, 2010. The Division set Mr. D's ongoing child support at \$161 per month. The order also set monthly arrears going back to December of 2009.<sup>7</sup>

Mr. D requested a formal hearing. Mr. D raised issues related to his deductions for supporting his older children, his payments of child support and the Division's withholding his pay. Mr. D also challenged the Division's authority to establish a child support order.<sup>8</sup>

After the hearing, the Division filed new calculations as requested. These calculations include deductions from Mr. D's income for supporting his older children. These calculations result in a monthly child support amount of \$66 for arrears and ongoing child support.<sup>9</sup>

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). There is not clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not lowered.<sup>10</sup>

### **III. Discussion**

Mr. D challenged the Division's authority to issue a child support order because Ms. M was married to someone else when J was conceived and when she was born and because he and Ms. M are not Alaska residents.

Under Alaska Statute 25.27.140(a) the Division has the authority to establish a child support order if no support order has previously been established for the child. This broad authority is limited under Alaska Statute 25.25.201, which sets out when the Division and Alaska courts have jurisdiction over a nonresident to establish a child support order.

The fact that Ms. M was married at the time J was conceived and born does not relieve Mr. D of his duty to pay child support. In Alaska there is only a presumption that a child born during a marriage is the child of that marriage.<sup>11</sup> In this case, that presumption was rebutted by

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<sup>7</sup> Exhibit 8.

<sup>8</sup> Exhibit 9.

<sup>9</sup> Ex. 11.

<sup>10</sup> Recording of Hearing & Ex. 11.

<sup>11</sup> *T.P.D. v. A.C.D.*, 981 P.2d 116, 119 (Alaska 1999).

genetic testing, which resulted in an administrative paternity order that was not appealed Mr. D is now J's legal, as well as her biological, father.

Even if Mr. D was a nonresident when the Division established his child support obligation, the Division had jurisdiction to issue this child support order for J. Alaska Statute 25.25.201(6) gives the Division jurisdiction to establish the child support order of a parent who is a nonresident if the parent engaged in sexual intercourse in Alaska and the child may have been conceived by that act of intercourse. J was conceived in Alaska as the result of sexual intercourse between Mr. D and Ms. M.<sup>12</sup> There is no dispute as to the facts that give rise to the Division's jurisdiction over Mr. D.

Mr. D also argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. D, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>13</sup> Mr. D only met his burden in showing that he is entitled to deductions for supporting his older children.

Mr. D's child support of \$66 per month was calculated based on his less than full-time year-round earnings and unemployment benefits in 2009, which raises the issue of whether additional income should be imputed to him. Mr. D testified that he is still unemployed but continues to look for work in the food service industry where he has experience.

Under Civil Rule 90.3, child support may be calculated based on a determination of potential income where there is voluntary unemployment or underemployment.<sup>14</sup> A noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.<sup>15</sup> 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.<sup>16</sup>

Under the circumstances of this case, it is not appropriate to impute income to Mr. D. Mr. D's failure to earn more income in 2009 was due to the job market in his home state. Mr. D

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<sup>12</sup> Exhibit 1 & Recording of Hearing.

<sup>13</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>14</sup> See Alaska Civil Rule 90.3, Commentary III, C.

<sup>15</sup> *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

<sup>16</sup> See *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 2002).

has not been unreasonably voluntarily under-employed. He has apparently made diligent but unsuccessful attempts to find full-time employment. At this point in time, the evidence in the record does not show that even making his best efforts to find employment Mr. D earned enough in 2010 or will probably earn enough during 2011 to justify setting his child support higher.

As discussed at the hearing and in the Division's post hearing filing, Ms. M may wish to request a modification after June of 2011, when his oldest child, Z, will have emancipated and Mr. D's employment status may have changed.

**CHILD SUPPORT ORDER**

1. Mr. D's ongoing child support for J is at \$66 per month effective April 1, 2011.
2. Mr. D is liable for child support arrears for J in the monthly amount of \$66 for the months of January 2010 through March 2011.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for J.
4. All other provisions of the Amended Administrative Child and Medical Support Order issued on December 2, 2011 remain in effect.

DATED this 8<sup>th</sup> day of March, 2011.

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 28<sup>th</sup> day of March, 2011

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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