

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0188-CSS
R. V.	)	CSSD No. 001135018
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, R. V., appealed a denial of his request for modification of his child support obligation. The obligee children are R. V. and A. T. The children’s maternal grandmother, W. N., is the custodian of record.

A hearing was held on May 8, 2011. Mr. V. appeared in person. Ms. N. appeared by telephone, and Child Support Services Division (CSSD) was represented in person by Child Support Specialist Erinn Brian.

Based on the evidence in the record, Mr. V.’ child support obligation should be modified and reduced to \$275 per month for two children.

**II. Facts**

*A. Background*

Mr. V.’ support obligation was established after a hearing in 2008 and set at \$591 per month for two children.<sup>1</sup> Mr. V. requested a modification of that obligation and the Notice of Petition for Modification of Administrative Support Order was mailed on February 18, 2011.<sup>2</sup> The request for modification was denied because Mr. V. did not submit an income affidavit or other income information.<sup>3</sup> Mr. V. appealed, stating that he had no tax history and did not work.<sup>4</sup>

*B. Material Facts*

Mr. V. does not work and has not worked since 2009.<sup>5</sup> He stated that he has been living in his car since 2009. Mr. V. has been working on several CD’s that he has been recording. He

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 3.

<sup>3</sup> Exhibit 4.

<sup>4</sup> Exhibit 5.

<sup>5</sup> The factual findings are based on Mr. V.’ testimony unless otherwise noted.

testified that a Mr. Z. has paid about \$100,000 for recording studio time and that when the CD's are complete, he will owe Mr. Z. \$115,000. He hopes to sell these CD's at a profit in the near future.

Mr. V. also receives money from time to time from other people. As an example, one person is teaching him to install carpet, and gives him \$30 or \$50 for the time spent in this on the job training. Mr. V. also has money to spend gambling on pool games and on card games. Although he does not have a steady job, his job search efforts have been limited to applying for work at businesses owned by Greek individuals.<sup>6</sup>

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>7</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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>8</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>9</sup>

Prior to the hearing, CSSD moved for summary adjudication denying Mr. V.' request for modification. CSSD argued that Mr. V. failed to provide any income information so there were no material facts in dispute. Mr. V. should have filed an income affidavit after receiving the Notice of Petition for Modification of Administrative Support Order. Even though he may not have any pay stubs or tax returns, Mr. V. did admit to having received money from time to time from other people. Those payments to him are considered income even though they were not reported for tax purposes. The failure to provide any income information is why his request for modification was initially denied.

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<sup>6</sup> Mr. V. is Greek.

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

<sup>8</sup> AS 25.27.190(e).

<sup>9</sup> 15 AAC 125.321(d).

For purposes of summary adjudication, however, the entire record must be reviewed. This includes the statement made by Mr. V. when he filed his appeal. He stated that he did not work.<sup>10</sup> This was sufficient to raise a material factual dispute as to whether there has been a material change in circumstances from when the prior support obligation was established.

It is difficult to determine from Mr. V.' testimony exactly how much money he does earn. His income would include all money received from all sources, including any gambling income.<sup>11</sup> Based on his testimony, however, the amount he is earning through various opportunities is less than he would earn if he obtained a regular job. Mr. V. suggested at the hearing that because of the poor economy, he could not obtain a job. He has not, however, supported that suggestion with any evidence. His testimony was that he has drastically limited his job search efforts, and has spent substantial time on a high risk business venture that is unlikely to produce any income.<sup>12</sup> If he was only responsible for supporting himself, Mr. V. would be within his rights to make these decisions. He has, however, two children who he is also responsible for. Given his limited efforts to look for a job, it is determined that he is voluntarily and unreasonably unemployed. Accordingly, his potential income will be used to calculate his child support obligation.<sup>13</sup>

Mr. V. has the ability to earn at least the minimum wage of \$7.75 per hour. While he may not be able to find full time work, he should at least be capable of obtaining part time work if he makes reasonable efforts to look for a job.<sup>14</sup> Some weeks he may work more than 40 hours per week and earn overtime; other weeks he may work no hours. He should, however, be able to average 30 hours per week. This would result in an annual income of \$12,090.<sup>15</sup> Using CSSD's online child support calculator, this results in a support obligation of \$204 per month for one child, and \$275 per month for two children.<sup>16</sup> This is more than 15% less than the current child support obligation, and thus constitutes a material change in circumstances.

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<sup>10</sup> Exhibit 6.

<sup>11</sup> Civil Rule 90.3(a)(1) & Commentary III.A.22.

<sup>12</sup> He testified that the CDs would sell for a net profit of about \$18 each. He would need to sell over 6,000 CDs just to earn back the amount he claims he will owe for the studio recording time.

<sup>13</sup> Civil Rule 90.3(a)(4).

<sup>14</sup> It is not reasonable to only apply at Greek owned businesses.

<sup>15</sup> 30 hours per week times 52 weeks per year times \$7.75.

<sup>16</sup> Attachment A.

**IV. Conclusion**

Mr. V. is voluntarily and unreasonably unemployed or underemployed. He is capable of earning at least minimum wage at a part time job. Based on an average of 30 hours per week, his child support should be set at \$204 per month for one child and \$275 per month for two children.

**V. Child Support Order**

- Mr. V.’ child support obligation is set at \$275 per month.
- All other provisions of the Modified Administrative Child Support and Medical Support order issued June 2, 2008, and affirmed in OAH No. 08-0483-CSS remain in full force and effect.

DATED this 13<sup>th</sup> day of June, 2011.

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 1<sup>st</sup> day of July, 2011.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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