

working full time. Mr. T worked for No Name, Inc., and earned \$111,671 in wages in 2009.⁴ Ms. T worked as a terminal supervisor for the No Name and earned \$18,831 in wages in 2009.⁵ In 2010, Mr. T earned \$104,212 in wages, and Ms. T earned \$29,210 in wages.⁶

J, a teenager, is the Ts' youngest child. J was not compliant with her parents' rules and with their consent she was placed in a residential treatment facility in no name, the No Name Regional Youth Facility, on four occasions. Each time, she ran away.⁷ In November, 2009, when she was 15, J was arrested on a misdemeanor theft charge for shoplifting a tee shirt.⁸ Her case came before the court as a delinquency proceeding on December 16, 2009.⁹ Mr. and Ms. T were in attendance at the court hearing. J was represented by the public defender.¹⁰ A juvenile probation officer, Laurie Slanaker, attended as a representative of the Department of Health and Social Services (Department).

The court issued a written disposition order placing J on probation for one year and placing her in the custody of the Department under the authority of AS 47.12.120(b)(3).¹¹ The written disposition order includes a provision stating that the parents must contribute child support in an amount to be determined by the Child Support Services Division.¹² A copy of the order was sent by the clerk to the Division of Juvenile Justice and to the Public Defender, but not to the Ts.¹³

⁴ See Ex. 6, p.1, l. 7 (total 2009 wages); Ex. 7, p. 6 (A T 2009 wages).

⁵ Ex. 7, p. 6; Affidavit of A T, ¶5.

⁶ Ex. 6, pp. 2, 5.

⁷ Testimony of A T.

⁸ See Affidavit of A R. T, ¶3; Ex. 9, p.1; Testimony of A T.

⁹ See Ex. 9, p. 1 (In Re J R T, No. 100-00-000 CP). The "CP" designation was used, prior to September 27, 2010, to designate both Child In Need of Aid (CINA) cases under AS 47.10 and delinquency proceedings under AS 47.12. Effective September 27, 2010, new CINA petitions were designated "CN" and new delinquency petitions were designated "DL". However, previously filed petitions in CP cases continued to use that designation; only new petitions filed after all prior petitions were disposed of were assigned the new CN or DL designator, as appropriate. See Alaska Court System, Administrative Bulletin No. 7 (Effective September 27, 2010) at note 7. In this particular case, the pleadings on record establish that the underlying proceeding was a delinquency proceeding under AS 47.12, rather than a CINA proceeding under AS 47.10.

¹⁰ See Ex. 1, p. 2; Testimony of A T.

¹¹ Ex. 9, p. 1.

¹² Ex. 9, p. 1. See AS 47.12.230.

¹³ Ex. 9, p. 2.

Mr. and Ms. T were concerned about their obligation to pay child support while J was in state custody, and after the hearing they raised the issue in a discussion with Ms. Slanaker.¹⁴ Ms. Slanaker informed them that the custody order was for placement only and did not terminate their parental rights.¹⁵ The Ts did not realize that the written order included a specific provision making them liable for child support during the period of placement.¹⁶ After the December, 2009, hearing, J was placed by the Department at the No Name Regional Youth Facility. After a month or two, J once again ran away. On March 1, 2010, she again appeared in court for violating her probation. The court issued an amended written disposition order, confirming her placement with the Department and extending the period of probation through March 1, 2011.¹⁷ The written order, as before, directed Mr. and Ms. T to pay child support, and was not sent to them.¹⁸

Sometime after the March hearing, J was placed at the No Name facility in No Name. Her parents were not satisfied with her progress at that facility, and wanted her returned to their home.¹⁹ The Department did not agree to return J to the T home, and the Ts retained an attorney, Leif Thompson, to request reconsideration of the disposition order by the superior court.²⁰

Mr. Thompson filed a petition in the superior court on September 13, 2010.²¹ The next day, September 14, the Child Support Services Division initiated child support proceedings to establish Mr. and Ms. T's child support obligation, in CSSD No. 001170645 (Mr. T) and No. 001170646 (Ms. T).²² Copies of the petitions initiating those

¹⁴ Ex. 13, p. 2.

¹⁵ *Id.*

¹⁶ Testimony of A T.

¹⁷ Ex. 10, p. 1.

¹⁸ *See* Ex. 10, p. 2. The court issued an order on January 12, 2011, stating that Mr. and Ms. T were present for the hearing. Ex. 14. Ms. T testified that she and her husband were not present at this hearing, and that the court was mistaken.

¹⁹ Testimony of A T.

²⁰ Affidavit of L. Thompson, p. 1; Testimony of A T.

²¹ *Id.*

²² *See* Ex. 1 (Administrative Order to Provide Financial Information and Medical Insurance Information, CSSD No. 001170646). The record does not include a copy of the initial petition filed in CSSD No. 001170645.

The Division of Juvenile Justice's written policy and procedures manual calls for the division to inform the Child Support Services Division within five business days of the issuance of an order placing a minor in state custody. *See* Ex. 13, p. 1, ¶4. Ms. Slanaker averred that she provided copies of all of the orders to the Division, but did not state the date. *See* Ex. 13, p. 1, ¶5. The Division did not include in the record any documentation regarding the date it was notified of those orders.

proceedings were mailed to Mr. and Ms. T, who received them a few days later.²³ About a week after the child support proceedings were initiated, Mr. Thompson spoke with Ms. Slanaker, who expressed the opinion that placing J in the T home would not be appropriate, in part because the parents' work schedules prevented them from providing adequate supervision.²⁴ At a hearing in September, the superior court declined to modify the disposition order and confirmed J's placement in the No Name facility.²⁵ In connection with the September proceedings, Mr. Thompson obtained copies of the disposition orders and provided them to the Ts, who had not previously seen them.²⁶

On October 8, Ms. T contacted a caseworker at the Child Support Services Division (Division), requesting information about the child support process.²⁷ The caseworker told Ms. T that the Division had initiated the support proceedings in September because that was when the Division received notice from the Department that J had been placed in state custody.²⁸ At a hearing on November 8, 2010, the superior court once again confirmed its prior order placing J in the custody of the Department, extended the period of probation, and issued an amended disposition order for the Ts to pay child support in an amount to be determined by the Division.²⁹

Following that hearing, on November 17, 2010, the Division issued administrative child support orders establishing separate support obligations for Mr. T (CSSD No. 001170645) and Ms. T (CSSD No. 001170646).³⁰ The orders established separate obligations for arrears for both parents from December, 2009, through November, 2010, and ongoing support obligations effective December 1, 2010. Copies of the orders were sent to the Ts by mail on Thursday, November 19; they received the copies on or before November 25.³¹

²³ Testimony of A T.

²⁴ Testimony of A T.

²⁵ Testimony of A T.

²⁶ Testimony of A T.

²⁷ CSSD's Response To Obligor's Opposition, p.1.

²⁸ Testimony of A T.

²⁹ Ex. 11, p. 1.

³⁰ See Ex. 2 (CSSD No. 001170646); Ex. 14, p. 1 (superior court order noting entry of two administrative support orders on November 17, 2010).

³¹ See Ex. 2, p. 12 (certificate of service dated November 19, 2010); CSSD's Response To Obligor's Opposition, p. 1.

On November 30, 2010, Ms. T resigned her employment at the No Name in order to be in the home so that J (who by then had been placed in a facility in No Name) could be returned to her parents' custody.³² On December 15, 2010, Ms. T again contacted a Division caseworker; she was informed of the process for contesting an administrative support order.³³ On December 22, 2010, A and A T submitted a timely joint request for administrative review with respect to both administrative support orders.³⁴ On January 4, 2011, the Ts filed a request for an emergency hearing in the superior court regarding their child support obligation.³⁵ On January 12, 2011, the court issued an order declining to grant relief, noting they had not exhausted their administrative remedy.³⁶ Ms. T submitted a request for modification on January 20, 2011 and was advised that her case was "pending a request for administrative review."³⁷ Mr. and Ms. T submitted a second joint request for administrative review on January 28, 2011.³⁸

The Division issued an amended administrative order in Ms. T's case on March 31, 2011.³⁹ On April 29, 2011, Ms. T filed an appeal from the amended administrative order that was issued in her case.⁴⁰ On May 27, 2011, the superior court returned J to her parents' custody.⁴¹ The Division has not conducted an administrative review of the order

³² Affidavit of A T, ¶6; Testimony of A T.

³³ CSSD's Response To Obligor's Opposition, p. 1.

³⁴ Ex. 3. The Division identifies this request as "a letter from Ms. T." Motion to Dismiss, p. 1. The request specifically asks that CSSD "delay any garnishment...as well as final determination of arrears." While not expressly requesting administrative review, it objects to the Division's order on grounds within the scope of a request for administrative review. The request bears a handwritten notation referencing CSSD No. 001170645, which is Mr. T's case number. It is unclear whether the handwritten notation was placed on the document by one of the Ts, or by some other person. However, the text of the request quite plainly applies to both cases: it was submitted and signed by both Adam and A T, and it repeatedly references a joint obligation. The request substantially complies with the requirements for a request for administrative review and therefore should have been treated as such, with respect to both cases. *See* 15 AAC 125.118(a) ("When a request for administrative review does not fully comply with the requirements of this subsection, the agency will, in its discretion, accept a request for administrative review that substantially complies with this subsection.").

³⁵ *See* Ex. 14, p. 1.

³⁶ Ex. 14.

³⁷ Ex. 4; Motion to Dismiss, p. 1.

³⁸ Ex. 5.

³⁹ Ex. 7.

⁴⁰ Ex. 8, p.3.

⁴¹ Ex. 15.

issued in Mr. T's case.⁴² The Ts, though their insurer, have paid in excess of \$8,000 per month for medical services provided to J during the time that she was in state custody.⁴³

III. Discussion

A. Period of Arrears

The Division's amended support order established arrears beginning in December, 2009. Ms. T argues that no arrears should be imposed for the period prior to September, 2010, on the ground that she was not notified of her potential liability for support during the time her daughter was in state custody until September, 2010, when she was provided by her attorney with a copy of the disposition order imposing upon her an obligation for child support.

The award of pre-order arrears is addressed in 15 AAC 125.105, which states:

(a) When the agency establishes an ongoing support obligation, or at any time after an ongoing support obligation has been established..., the agency may issue a notice and finding of financial responsibility that sets the support obligation for periods before the effective date of the ongoing support obligation ...

...
(1) if initiated by the state because...the child is in state placement..., the agency will establish arrears beginning as of...the first month of state placement....

In this particular case, the Division established arrears for the period dictated by 15 AAC 125.105(a)(1). Moreover, AS 47.12.230 expressly provides that a parent whose child is placed in state custody under 47.12.120(b)(3) may be required to pay "a sum to cover in full or in part the maintenance and care of the minor."⁴⁴ This statute provided the Ts with constructive (legal) notice of their obligation, even if they did not have actual knowledge of it. Ms. T's lack of actual knowledge of the support obligation is a circumstance that may be considered in determining the amount of her support obligation, but is not a bar to imposition of any support obligation at all.

⁴² Ms. Briann confirmed this at the hearing.

⁴³ See Ex. A; Testimony of A T.

⁴⁴ See also, AS 47.12.150(c) (after custody transferred to state, parents have a residual responsibility for support).

B. Presumptive Support Obligation

A parent's presumptive support obligation is based upon the parent's adjusted annual income,⁴⁵ that is, total income after allowable deductions.⁴⁶ When calculating arrears, except when the parent is voluntarily and unreasonably unemployed, the support obligation is based on the parent's actual income during the period the arrears accrued.⁴⁷ The Division establishes a child support obligation for the first year of the period of arrears, and thereafter adjusts the support obligation for each year in which there was a material change in circumstances.⁴⁸

1. *Actual Income*

Ms. T's actual total income in 2009 was \$20,316, consisting of her wages (\$18,831) and her Alaska Permanent Fund dividend (\$1,305).⁴⁹ Her actual total income in 2010 was \$30,491, consisting of her wages (\$29,210) and her Alaska Permanent Fund dividend.⁵⁰ Ms. T has had no income to date in 2011.

Based on her actual total income in 2009, 2010, and 2011, and providing standard deductions for applicable taxes (federal income tax, Social Security, and unemployment insurance), Ms. T's adjusted annual income was \$17,401 in 2009, \$25,358 in 2010, and will be limited to her Alaska Permanent Fund dividend in 2011.⁵¹

2. *Voluntary And Unreasonable Unemployment*

The Division argues that Ms. T's support obligation from December 1, 2010 through May, 2011, should be based on potential income rather than actual income, because Ms. T voluntarily left her job. Ms. T contends, however, that she resigned her position in order to facilitate her daughter's return to her custody, in light of the Department's view that the parents were unable to provide adequate supervision while both were working.

⁴⁵ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

⁴⁶ 15 AAC 125.065(a); 15 AAC 125.070(a); Civil Rule 90.3(a)(1).

⁴⁷ 15 AAC 125.050(b).

⁴⁸ 15 AAC 125.105(e).

⁴⁹ See Ex. 7, p. 4.

⁵⁰ See Ex. 6, p. 5.

⁵¹ See Ex. 7, pp. 6, 7.

In order to base make a finding of voluntary unemployment, the unemployment must be not only voluntary, but unreasonable.⁵² Whether voluntary unemployment is unreasonable depends on all of the circumstances, including the children's needs and the parents' financial abilities.⁵³

In this particular case, Ms. T's unemployment is not unreasonable. Apart from her need to be in the home in order to make it possible for J to be returned to the custody of Mr. and Ms. T, Mr. T's income was more than sufficient to meet J's reasonable needs for support without any additional contribution from Ms. T. Because Ms. T was not voluntarily and unreasonably unemployed, Ms. T's support obligation for the period of arrears is properly based on her actual income.

3. Calculation of Presumptive Support Obligation

The Division initially calculated Ms. T's support obligation as 20% of her adjusted income. However, that calculation was in error, because it did not take into account the fact that Ms. T had another child in the home. Under Civil Rule 90.3(i), in a case of third party custody, the support obligation is calculated based on the total number of children, reduced *pro rata* to reflect the number of children in third party custody. The Division's amended order reflects the correct monthly support obligation for 2009 (\$196) and 2010 (\$285): her support obligation is 27% of adjusted income, reduced *pro rata* by 50% because only one of Ms. T's two minor children is in state custody.

However, beginning in December, 2010, the correct calculation for Ms. T is a minimum order of \$25 per month (50% of the minimum amount of \$50 per month, pursuant to Civil Rule 90.3(i)), based on her actual income. Thus, Ms. T's arrears based on her actual income are \$196 for December, 2009, \$285 per month through November, 2010, and \$25 per month thereafter.

⁵² "The court may calculate child support based on a determination of the potential income of a parent who voluntarily and unreasonably is unemployed or underemployed....The court shall consider the totality of the circumstances in deciding whether to impute income." Civil Rule 90.3, Commentary at III(C) (emphasis added). See Civil Rule 90.3(a)(4); Maloney v. Maloney, 969 P.2d 1148 (Alaska 1998).

⁵³ See, e.g., Curley v. Curley, 588 P.2d 289, 292 (Alaska 1979).

C. Adjustment of Support Obligation

The support obligation may be reduced if the amount based on income would result in a manifest injustice due to unusual circumstances.⁵⁴ The obligor must provide clear and convincing evidence of manifest injustice.⁵⁵ Manifest injustice is shown when “a reasonable person would be convinced that the award is either unjustly large or unjustly small after carefully evaluating the award amount with reference to the considerations set out in the Commentary to Alaska Rule of Civil Procedure 90.3 and 15 AAC 125.075(a)(2) and (b).”⁵⁶

Ms. T’s primary argument is that it is manifestly unjust to order her to pay arrears that accrued before she was provided actual notice of the existence of the support obligation. In that connection, she asserts that she was not informed by the court,⁵⁷ her daughter’s attorney, or the juvenile probation officer at the time of the disposition hearings in December, 2009, and March, 2010, that the court’s disposition order included an order for her to pay child support. She also notes that a copy of the court order imposing the support obligation upon her was not sent to her.⁵⁸

This case includes four circumstances that are specifically identified in the Commentary to Civil Rule 90.3 and in 15 AAC 125.075 as potentially supporting a variance from the standard child support obligation. First, there is evidence of hardship due to the existence of debts of the obligor parent.⁵⁹ Ms. T testified that before learning of their support obligation, the Ts purchased a new home and incurred a substantial mortgage debt they would not have taken on if they had known of the support obligation.

⁵⁴ 15 AAC 125.075(a)(2).

⁵⁵ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

⁵⁶ 15 AAC 125.080.

⁵⁷ Delinquency Rule 14(b)(1) provides that when a juvenile is arraigned on a delinquency petition, the court must inform the parents that they “may be liable for child support payments if the child is placed outside the home at any time during the proceedings.” Ms. T has not asserted that the court failed to comply with this requirement. The court was not required to repeat its admonition at the disposition hearing. *See* Delinquency Rule 23.

It is possible that the December 16, 2009 hearing was the initial hearing in J’s case, and that the court gave the warning of potential liability for child support as required by Delinquency Rule 14(b)(1) at that time. If so, that may be why, following the hearing, the Ts inquired regarding their support obligation. *See* note 14, *supra*.

⁵⁸ As J’s parents, the Ts were parties to the proceeding. *See* Delinquency Rule 2(n). Criminal Rule 44(c), made applicable to delinquency proceedings by Delinquency Rule 1(e), provides that “[t]he clerk shall distribute to each party affected a copy of every order or judgment entered.” It appears that the failure to distribute a copy of the order to the Ts was contrary to these court rules.

⁵⁹ *See* Civil Rule 90.3, Commentary at VI(B)(4); 15 AAC 125.075(b)(2).

Second, the establishment of pre-order arrears can be problematic when the obligor lacks actual knowledge of the existence of the support obligation.⁶⁰ In this case, while the Ts had constructive notice of their obligation, they lacked actual knowledge of the support obligation until September, 2010. Third, Ms. T's husband's income is more than sufficient to meet their daughter's reasonable need for support.⁶¹ Fourth, both J and her older sister, C, have unusually large medical expenses that the Ts have been covering.⁶²

In addition to those considerations, in this particular case two other circumstances support a reduction in the amount of arrears. First, J has returned to the Ts' residence, and to take money out of the household in order to pay arrears for a prior period of state custody would reduce the amount of household income available for her current support. Second, under AS 47.12.230 the Ts' residual support obligation is, in effect, to compensate the State of Alaska for the maintenance and care of their daughter, and there is no evidence in the record that the expenses incurred by the state for those purposes exceed the amount paid to it by the Ts' insurance and under Mr. T's support order.⁶³

IV. Conclusion

Due to the unusual circumstances of this case, imposition of arrears in excess of the minimum amount would be manifestly unjust.

ORDER

The Amended Administrative Child Support and Medical Support Order dated March 31, 2011, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 31, 2011, is **AFFIRMED**:

1. Ms. T's monthly arrears are set at \$25 per month for the period from December 1, 2010, through May 31, 2011.

⁶⁰ See Civil Rule 90.3, Commentary at VI(E)(1).

⁶¹ See 15 AAC 125.070(a)(2)(G) (consideration of income of both parents may support a variance).

⁶² See 15 AAC 125.070(a)(2)(D) (extraordinary health expenses may support a variance).

⁶³ According to a draft 2006 study, the average daily cost for room and board of a child in state custody was at that time less than \$30, and providers were generally being paid at the rate of \$40 per day for custodial care. See "Residential Care Facilities Cost Study", June 21, 2006, p. 7, Table 2; p. 10, Table 4; p. 11, Table 6 (available at www.hss.state.ak.us/dbh/resources/pdf/brs_ratecoststudyrev62106.pdf; accessed September 26, 2011).

2. The ongoing support obligation is set at \$25 per month effective June 1, 2011, and is suspended for as long as J remains in Ms. T's custody.

This case is **REMANDED** to the Division to conduct an administrative review in CSSD Case No. 001170645.⁶⁴ The Office of Administrative Hearings does not retain jurisdiction.

DATED: October 6, 2011.

Signed

Andrew M. Hemenway
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 3rd day of November, 2011.

By: Signed

Signature
Angela M. Rodell

Name
Deputy Commissioner

Title

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

⁶⁴ In particular, the Division should confirm that the amount of support was properly calculated in accordance with Civil Rule 90.3(i). As observed in the text, Ms. T's support obligation was not correctly calculated in the first instance. *Supra*, at p. 8.