

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

IN THE MATTER OF)	OAH No. 11-0283-CSS
Q L. E)	CSSD No. 001153537
_____)	

DECISION AND ORDER

I. Introduction

This case is Q L. E’s appeal of an order issued by the Child Support Services Division (Division), which granted his request to lower his monthly child support obligation. The order being appealed is the Division’s Modified Administrative Child and Medical Support Order, which lowered Mr. E’s monthly ongoing child support order for his child, O, from \$357 to \$260. This order was issued on June 18, 2011 and was effective May 1, 2011.

On July 19, 2011, a hearing was held to consider Mr. E’s appeal. L H, the custodial parent in this case, participated. Mr. E also participated. The Child Support Services Division (Division) was represented by Andrew Rawls, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be overturned. Mr. E’s ongoing child support obligation for O should remain at \$357 per month, because there has not yet been a change in the parties’ circumstances that would justify a modification of child support. The evidence in the record shows that Mr. E’s current income and earning capacity is at least equal to the amount used to set his current monthly ongoing child support obligation.

II. Facts

This case is a modification action.¹ The Division granted Mr. E’s request for modification review because the Division determined that there was a 15% change in Mr. E’s ongoing child support amount based on Mr. E’s earning capacity.²

Mr. E’s current ongoing child support of \$357 per month was set based on annual earnings of \$23,341 plus a PFD, which was Mr. E’s income in 2007. In the modification order, the Division reduced Mr. E’s ongoing child support to \$260 per month effective May 1, 2011. The modified amount was based on full-time Alaska minimum wage earnings plus a PFD. The Division used this imputed level of annual income amount based on the lack of any reported

¹ Alaska Civil Rule 90.3(h) governs modification actions.
² Exhibits 5.

income for Mr. E for 2011.³

After the Division granted his request for a downward modification, Mr. E requested a formal hearing.⁴

At the hearing, Mr. E testified that he was 27 years old and had not graduated from high school. Mr. E was doing aircraft mechanic work until he quit. Mr. E then worked for moving companies until December of 2010 earning about \$16 per hour. Mr. E quit his moving jobs because he did not like the working conditions or the way his employers treated him, and because he was frustrated by how much child support was being taken out of his paychecks. Mr. E worked at an unreported job in exchange for housing in 2011. Mr. E is currently working for cash for \$16 per hour framing a house for a friend.⁵

III. Discussion

In a child support hearing, a party challenging the order on appeal has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁶ At the hearing, the Division argued that the evidence showed that its determination that there had not been a material change in circumstance that would justify a modification of ongoing child support was incorrect. The Division is correct. The evidence in the record shows that Mr. E is not entitled to a reduction his ongoing child support obligation for O.⁷

Income can also be imputed to an obligor in cases of unreasonable voluntary underemployment.⁸ The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.⁹ On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁰

Obligor parents should not always have to pay support based on their maximum earning

³ Exhibits 1-4.

⁴ Exhibits 6.

⁵ Recording of Hearing-Testimony of Mr. E.

⁶ Alaska Regulation 15 AAC 05.030(h).

⁷ Recording of Hearing.

⁸ Alaska Civil Rule 90.3(a)(4).

⁹ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁰ *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

capacity when they choose to earn less than they could.¹¹ The custodial parent and the children should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.¹² 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.¹³

In this case it is appropriate to impute income. The evidence in this record shows that it is more likely than not that Mr. E is unreasonably and voluntarily underemployed.¹⁴ Mr. E failed to show either that it is more likely than not that he is not or could not earn an annual income equal to the amount used to set his current ongoing child support order, \$23,341, which is less than full-time earnings of \$14 per hour. Mr. E has skills that make him capable of earning at least this much. Mr. E is currently earning \$16 per hour. Although this job may not last much longer there is nothing to prevent Mr. E from finding other work. Mr. E quit working for movers at least in part to avoid having child support taken from his pay, as is evidenced by his recent decisions to work at jobs where his income is not reported. These are not circumstances that justify a downward modification of his ongoing child support obligation to his daughter.

IV. Conclusion

I conclude that Mr. E's request for a downward modification of his ongoing child support should be denied.

V. Child Support Order

1. The Division's Modified Administrative Child and Medical Support Order, which was issued on June 18, 2011 is overturned.
2. The Petition for Modification of Administrative Child and Medical Support Order issued on April 20, 2011 is denied.
3. The Division's Administrative Child and Medical Support Order, which was issued on October 16, 2008 remains in effect.

¹¹ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹² *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987).

¹³ See *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

¹⁴ Recording of Hearing.

4. Mr. E's ongoing child support for his child, O, will remain at \$357 per month.

DATED this 16th day of August 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 2nd day of September, 2011

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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