

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

IN THE MATTER OF:)

E A. H)

OAH No. 12-0092-CSS

CSSD No. 001173886

DECISION AND ORDER

I. Introduction

This case involves the obligor E A. H's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on March 13, 2012. The children in this case are F, 16, and J, 13. The girls' other parent is T L. X, f/n/a H. K and E C are the third party custodians of F.

The initial hearing was held on May 3, 2012, followed by a supplemental hearing on June 5th. Ms. H requested and was granted leave to move for another supplemental hearing to present evidence that Mr. H was voluntarily and unreasonably unemployed. That hearing was held on July 26th. Both parents and E C participated in the first two hearings. Only Mr. H and Ms. H appeared for the third hearing. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearings were recorded.

Based on the record and after careful consideration, the arrears portion of CSSD's Amended Administrative Child and Medical Support Order dated March 13, 2012 is affirmed.¹ Mr. H's child support arrears are set at \$464 per month for two children from February 2011 through July 2011. A court order regarding his ongoing child support obligation took effect as of August 1, 2011.

II. Facts

Mr. H and Ms. X, who are divorced, are the parents of F and J. It is not known when the parties separated, but for purposes of this appeal, J has been living with Ms. X since the marriage ended, but at least no later than January 2011. In November 2010, F went to stay with K and E C, and have been with them since that time. They apparently have a court order awarding

¹ There is an ongoing support amount set out in section II.A. of the amended administrative order, but CSSD stated it is a typographical error. This is an arrears case only and no ongoing amount is being charged directly by CSSD. Mr. H's ongoing child support has been set by the court, in an order issued on September 6, 2011.

them temporary custody or guardianship of F, but it was not produced. Neither Mr. H nor Ms. X challenges the fact of F's residence with the Cs since November 2010. CSSD considers them third party custodians and splits Mr. H's child support payments between them and Ms. X.

At the time this matter arose, Mr. H was employed by No Name, Inc. According to the company's Operations Manager N S, Mr. H was laid off due to low work productivity on May 13, 2011, apparently brought on by the stress of the parties' divorce.² His replacement at No Name did not work out over the long term, so in November 2011, Mr. S initiated talks with Mr. H to return, which the obligor did on January 30, 2012.

While he was unemployed, Mr. H instituted an extensive work search in Minnesota, applying to numerous employers in the food brokerage and distribution field.³ He was not able to secure employment and eventually returned to Alaska and his position with No Name, Inc. He was not voluntarily and unreasonably unemployed or underemployed during the period of time he was unemployed from No Name, Inc.

In 2011, Mr. H received wages of \$17,401.84, the PFD of \$1,174; and unemployment benefits of \$4,810; for total gross income of \$23,385.84.⁴ Pursuant to Civil Rule 90.3, this income figure yields a child support amount of \$464 per month for two children (\$344 per month for one child).⁵

III. Discussion

A. Mr. H is Liable Only for Arrears in the Administrative Action

A parent is obligated both by statute and at common law to support his or her children,⁶ beginning when the child is born.⁷ If a child support case is initiated with CSSD, the agency charges the obligor parent support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child.⁸ Ms. X requested child support services in February 2011, so this administrative child support action

² Letter from N S, received July 6, 2012.

³ Obligor's testimony and letter dated July 2, 2012.

⁴ Exh. 11; Exh. 8 at pg. 8.

⁵ Exh. 8 at pg. 8.

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

⁸ 15 AAC 125.105(a)(1)-(2).

begins as of February 2011,⁹ and applies only for the period from February 2011 through July 2011.¹⁰ As of August 2011, the Superior Court has assumed jurisdiction over Mr. H's child support obligation by issuing a support order effective August 1, 2011.¹¹

In a child support matter, the person who files the appeal has the burden of proving that the division's order was erroneous.¹² Mr. H filed the appeal, so he must prove by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect, either as to the support amount calculated or the time periods during which support has been assessed against him.¹³

B. CSSD Correctly Calculated Mr. H's Child Support

Ms. X claims that CSSD should increase Mr. H's income for 2011 on the basis that he was voluntarily and unreasonably unemployed or underemployed. If a parent is found to be voluntarily and unreasonably unemployed, his or her child support may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."¹⁴ This treatment may also be applied to the custodian's portion of a shared custody support amount.

In cases in which CSSD or a party is claiming voluntary unemployment on the part of the obligor parent, the court or administrative law judge must determine whether that parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."¹⁵ In addition to the question whether the parent's lack of work is voluntary, it is also necessary to determine whether the parent's unemployment 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,

⁹ 15 AAC 125.105(a)(2). Mr. H applied for services in January 2011, but CSSD has not recognized the application as initiating his support obligation prior to the effective date triggered by Ms. X's application. CSSD reports that in March 2012 it instituted a new policy that makes a support obligation effective the first of the next month after an application for services is received. Because Ms. X filed her application in February 2011, CSSD's current regulation, 15 AAC 125.105(a)(2), applies. Whether there is a new CSSD policy on the effective date of an administrative order initiated by a custodial parent, and whether it would be applicable here, is not at issue in this appeal.

¹⁰ Ms. X argues that the C are not entitled to receive child support in this matter, but there does not appear to be any provisions of CSSD's regulations that would prevent it. Ms. X's application for services initiated the action against Mr. H under 15 AAC 125.105(a)(2), and CSSD has determined that one of the children was in the physical custody of the C for the entire time period involved and is diverting one-half of Mr. H's payments to them. This is consistent with the court's orders in the parties' litigation. See Exhs. 3 & 4.

¹¹ Exhs. 3 & 4.

¹² 15 AAC 05.030(h).

¹³ 2 AAC 64.290(e).

¹⁴ Civil Rule 90.3(a)(4).

¹⁵ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

or of "purely personal choices."¹⁶ 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 parent.¹⁷ The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income to a party based on voluntary unemployment."¹⁸

After careful consideration, Ms. X's request to have Mr. H found voluntarily and unreasonably unemployed is denied. There is insufficient evidence that he engaged in voluntary conduct "for the purpose of becoming or remaining unemployed." Mr. H was fully employed at the time this support action arose and was laid off from his employment halfway into the time at issue. He subsequently involved himself in an extensive work search and eventually was rehired at his former place of employment. Thus, Mr. H's child support should be calculated from his actual income during 2011, not from an imputed income figure.

CSSD correctly calculated Mr. H's child support at \$464 per month for two children (\$344 per month for one child). The calculation is based on his actual income for 2011, which consists of his earnings from wages for the first part of the year, his unemployment benefits, and lastly, his PFD. The calculation is correct as it appears in the amended order, and applies only to the arrears assessed against Mr. H.¹⁹

C. Mr. H is Entitled to Credit for Direct Payments Made to the Cs

CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.²⁰ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.²¹

Ms. C testified that Mr. H made direct payments to her in the form of food and cash. After the hearing, she filed copies of a calendar on which she recorded child support payments Mr. H made to her. The calendar reflects that he made payments to her as follows: in February

¹⁶ *Vokacek v. Bokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁷ *Kowalski*, 806 P.2d at 1371.

¹⁸ Civil Rule 90.3, Commentary III.C.

¹⁹ As pointed out in n.1, above, the ongoing child support amount set forth in the amended order is a typographical error and does not apply in Mr. H's case, which establishes arrears only for the period of time prior to the court's September 6, 2011, order regarding Mr. H's ongoing child support obligation. See Exhs. 3 & 4.

²⁰ AS 25.27.020(b).

²¹ *Id.*

2011, \$200; March 2011, \$200; and May 2011, \$240.²² The total of these payments is \$640. Mr. H is entitled to a credit for these direct payments made to Ms. C, and he should be credited only as to his obligation to the Cs. He is not entitled to a credit against his support obligation to Ms. X.

IV. Conclusion

Mr. H met his burden of proving by a preponderance of the evidence that the Amended Administrative Child and Medical Support Order CSSD issued in his case on March 13, 2012, was issued in error. The ongoing child support amount of \$779 per month was a typographical error and does not apply in this case, as the amended order is for arrears only for the period from February 2011 through July 2011. As of August 1, 2011, the Superior Court's child support order controls Mr. H's support obligation.

Pursuant to Civil Rule 90.3, CSSD has correctly calculated Mr. H's child support at \$464 per month for two children (\$344 per month for one child) for the applicable period of time. There was no variance under Civil Rule 90.3(c) requested or granted in this appeal.

Mr. H is eligible for a credit for direct payments made to Ms. C in the following amounts: for February 2011, \$200; March 2011, \$200; and May 2011, \$240; for a total amount of \$640. This credit applies only to his obligation to Ms. C.

V. Child Support Order

- Mr. H is liable for child support arrears for F and J in the amount of \$464 per month for two children (\$344 per month for one child) for the months of February 2011 through July 2011;
- Mr. H's ongoing child support obligation has been determined by the court as of August 2011;
- Mr. H is eligible for a credit for direct payments made to Ms. C in the following amounts: for February 2011, \$200; March 2011, \$200; and May 2011, \$240; for a total amount of \$640 (this credit applies only to his obligation to Ms. C);

²² Calendars received on June 15, 2012. Ms. C also filed copies of two cash receipts, but they seem to document two of the payments shown on the calendars. In the absence of an explanation for the seemingly double payments, the additional amounts reflected on the receipts will not be credited to Mr. H.

- All other provisions of the Amended Administrative Child and Medical Support Order dated March 13, 2012, remain in full force and effect.

DATED this 15th day of August, 2012.

By: Signed
Kay L. Howard
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 12th day of September, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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