

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

IN THE MATTER OF)	OAH No. 12-0942-CSS
U K)	CSSD No. 001130982
_____)	

DECISION AND ORDER

I. Introduction

This case is U K’s appeal of an order issued by the Child Support Services Division (Division), which denied his request to lower his monthly child support obligation. The order being appealed is the Division’s Decision on Request for Modification Review, which denied Mr. K’s petition for a downward modification of his ongoing child support order for his child, Z. This order was issued on November 14, 2012.

On January 7, 2013, a hearing was held to consider Mr. K’s appeal. A B, the custodial parent, participated. Mr. K did not participate.¹ The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Mr. K’s ongoing child support obligation for Z should remain at \$112 per month, because Mr. K did not show that there has been a change in the parties’ circumstances that would justify a modification of child support.

II. Facts

This case is a modification action.² The Division denied Mr. K’s request for modification review. Mr. K’s current ongoing child support was set based on an estimate of his income in 2005.³

The Division denied Mr. K’s request for a downward modification, because, based on the lack information he provided on his current income and employment, the Division determined that there was not sufficient evidence of a material change in the parties’ circumstances. After the Division denied his request for a downward modification, Mr. K requested a formal hearing

¹ Mr. K did not provide a phone number for the hearing as instructed on the notice sent to him and there was no answer at his phone numbers of record when he was called at the time set for the hearing.

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

³ Exhibit 1 & 4.

and provided financial records including his and his wife's 2011 federal income tax return.⁴

In 2011, Mr. K and his wife reported \$22,724 in adjusted gross income. Mr. K, however only had \$1,086.43 in reported wages in 2012, and \$467 in reported wages in 2008. Mr. K has not indicated that he is unable to work Ms. B testified that Mr. K is not disabled.⁵

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. K, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁶ Mr. K did not show that the Division's determination that his ongoing child support obligation for Z should not be modified was incorrect.⁷

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.⁸ The evidence provided Mr. K does not show that a material change of circumstances has not occurred since Mr. K's ongoing child support was set at \$112 per month in 2005.

Furthermore, the Division has the authority to decline to complete its review of a request for modification when, as in this case, the party requesting the review does not provide the required income information.⁹ Mr. K did not timely provide his income information.

Mr. K did not provide income information until after the Division had made its determination and then he did not provide an explanation of his apparent chronic unemployment. Mr. K's has another adult in his household who has an income. If Mr. K has simply chosen to forgo employment and depend of his wife's earnings, a downward modification of his child support would not be justified. A parent who voluntarily reduces his income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁰ Income can be imputed to a parent in cases of unreasonable voluntary underemployment.¹¹ A custodial parent and the parents' child should be forced to finance the noncustodial parent's lifestyle choice

⁴ Exhibits 4 &5.

⁵ Exhibit 5 & Recording of Hearing-Testimony of Ms. B.

⁶ Alaska Regulation 15 AAC 05.030(h).

⁷ Recording of Hearing.

⁸ Alaska Civil Rule 90.3(h)(1).

⁹ Alaska Regulation 15 AAC 125.316(e).

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

¹¹ Alaska Civil Rule 90.3(a)(4).

if that choice is unreasonable given the duty to provide child support.¹²

Mr. K will need to file another request for a modification and timely provide the division with the information it needs to conduct an administrative review if he wants to try to have his ongoing monthly child support amount modified. If he is not earning an income close to the amount used to set her support in 2005, Mr. K should be prepared to show the Division that he is not unreasonably underemployed.

IV. Conclusion

I conclude that the Division correctly denied Mr. K's request for a downward modification of his ongoing child support. The child support amount in his current order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The Division's Decision on Request for Modification Review issued on November 14, 2012, is affirmed.

DATED this 10th day of January 2013.

By: Signed _____
Mark T. Handley
Administrative Law Judge

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

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 31st day of January, 2013.

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

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