

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

IN THE MATTER OF)
S J. P)

) OAH No. 13-0178-CSS
) CSSD No. 001185421
)

DECISION AND ORDER

I. Introduction

This case is S J. P's appeal of an administrative order establishing his child support obligation for his child, F. The Child Support Services Division (Division) issued this order. The appeal was referred to the Office of Administrative Hearings and assigned to Administrative Law Judge Mark T. Handley.

On March 4, 2013, a hearing was held to consider Mr. P's appeal. Mr. P participated. S S, the custodial parent, also participated. The Division was represented by Erinn Brian, Child Support Services Specialist. The hearing was audio-recorded. The record closed on March 21, 2012.

Mr. P asked to have his child support set based on the income he reported. The Division's order is upheld. Mr. P failed to provide persuasive evidence that the Division's estimate of his income was incorrect.

II. Facts

In July of 2012, Ms. S requested the Division's services to collect child support for F, who was born in 2008.¹ Paternity is not in dispute.²

The Division issued an Administrative Child and Medical Support Order on September 27, 2013.³ Mr. P requested an administrative review. The Division issued an Amended Administrative Child and Medical Support Order on January 17, 2013.⁴ In this order, the Division set Mr. P's monthly ongoing child support obligation for F at \$268. The Division's order also established arrears beginning in July of 2012.⁵

Ms. S requested a formal hearing.⁶

¹ Exhibit 1.
² Recording of Hearing & Exhibit 9.
³ Exhibit 3.
⁴ Exhibit 7.
⁵ Exhibit 7.
⁶ Exhibit 9.

Mr. P is 57 years old. He is a carpenter. Mr. P is also trying to start a farm on property that he recently transferred to a trust for the adult son he lives with. Mr. P has also transferred other real estate he owned to trusts. One of these trusts is for the mother of another of his children who lives in the same town.⁷

III. Discussion

At the hearing, Mr. P asserted that he did earn the annual income that the Division used to calculate and set his child support in the Amended Administrative Child and Medical Support Order. Ms. S gave her reasons for believing that Mr. P both could and probably was earning more income than he was reporting.

At the hearing, Mr. P was not a credible witness. Mr. P tried to avoid answering questions that he believed did not support his position. He did not provide complete answers until he was pressed. He was vague in response to questions about his recent employment and his ability to work. Mr. P has transferred real property to trusts for his adult son, who lives with him, and the mother of another child who lives in the same town.

Income can 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 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

⁷ Recording of Hearing & Exhibit 8.

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).

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

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

circumstances in the case, income should be imputed.¹³

Furthermore, when a parent with a child support obligation makes an accurate determination of his or her income impossible, income must be imputed to calculate the child support obligation. The criteria used to estimate the proper amount of income to impute are the same as those used in a case where the noncustodial parent is voluntarily and unreasonably unemployed or underemployed. Rather than determining the parent's actual income, the parent's earning capacity is used to estimate the parent's potential income.¹⁴

In this case it is appropriate to impute income. The evidence in this record shows that it is more likely than not that Mr. P is both under-reporting income and is unreasonably and voluntarily underemployed.¹⁵ Mr. P failed to show either that it is more likely than not that he is not earning or could not earn an annual income equal to the amount used to set his current ongoing child support order, \$18,038, which is less than full-time earnings of \$10 per hour. Mr. P has skills that make him capable of earning at least this much. There is nothing to prevent Mr. P from finding work. Mr. P has transferred income-producing property and reduced his tracable earnings. These are not circumstances that justify reducing his ongoing child support obligation to F.

IV. Conclusion

I conclude that the Division correctly established a child support obligation in this case. The child support amount in the Division's order was calculated using the primary custody formula in Civil Rule 90.3(a).

IV. Child Support Order

The Division's Amended Administrative Child and Medical Support Order issued on January 13, 2013 is affirmed.

DATED this 8th day of April, 2013.

By: Signed _____
Mark T. Handley
Administrative Law Judge

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

¹⁴ *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002).

¹⁵ Recording of Hearing.

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 6th day of May, 2013.

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

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