

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

In the Matter of: )  
 )  
 E J. C ) OAH No. 13-0209-CSS  
 ) CSSD No. 001136577  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The custodial parent, N J. C, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 18, 2013.<sup>1</sup> CSSD's order lowered the monthly child support payable by the obligor parent, E J. C, from \$696 to \$398 effective January 1, 2013.<sup>2</sup> Ms. C asserts that Mr. C' child support obligation should not be reduced because, although Mr. C' income has gone down, that decrease was due to Mr. C' voluntary actions.<sup>3</sup> This decision concludes that Mr. C is voluntarily and unreasonably underemployed. Accordingly, CSSD's Modified Administrative Child and Medical Support Order dated January 18, 2013 is vacated and Mr. C' ongoing child support obligation is returned to its prior amount of \$696 per month as of January 1, 2013.

**II. Facts**

*A. Relevant Procedural History*

Mr. C' child support was established at \$472 per month in 2005, and then modified to \$696 per month in 2011.<sup>4</sup> On November 30, 2012 Mr. C submitted a child support modification request to CSSD.<sup>5</sup> On January 18, 2013 CSSD granted Mr. C' modification request and issued a Modified Administrative Child and Medical Support Order that decreased his ongoing child support obligation to \$398 per month, effective January 1, 2013.<sup>6</sup> Ms. C appealed CSSD's modification decision on February 5, 2013.<sup>7</sup>

The formal hearing was held on March 28, 2013. Mr. C and Ms. C participated in the hearing by telephone. Child Support Specialist Andrew Rawls represented CSSD. At the end of

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<sup>1</sup> Exs. 6, 7.  
<sup>2</sup> Ex. 1 p. 6; Ex. 6 p. 1.  
<sup>3</sup> Ex. 7, N C hearing testimony.  
<sup>4</sup> Ex. 1.  
<sup>5</sup> Ex. 2, p. 1.  
<sup>6</sup> Exs. 5, 6.  
<sup>7</sup> Ex. 7.

the hearing, the record was left open for the submission of post-hearing filings. Final record closure occurred on May 20, 2013.

*B. Material Facts*

Mr. C and Ms. C have one child: L, age 8.<sup>8</sup> L lives with Ms. C.<sup>9</sup>

Mr. C was previously employed by the No Name (NN).<sup>10</sup> Records obtained by CSSD from the Alaska Department of Labor and Workforce Development (DOL) indicate that Mr. C received gross wages of \$49,499.36 from NN in 2011.<sup>11</sup> Mr. C quit his job with NN during the second quarter of 2012, and was unemployed during the third quarter of 2012. In October 2012 Mr. C began working for No Name, Inc. (NNI).<sup>12</sup> He was paid significantly less by NNI than by NN, and his earnings from NNI for the fourth quarter of 2012 totaled \$5,127.30.<sup>13</sup>

Mr. C' household consists of himself, his fiancé, and their three year old daughter.<sup>14</sup> They pay \$980 per month in rent.<sup>15</sup> Their other main monthly expenses are \$510 for food, \$334 for a car payment, \$180 for car insurance, \$180 for gasoline, \$50 for vehicle maintenance, \$100 for gas heat, \$60 for electricity, \$110 for cell phone service, \$60 for internet service, \$33 for cable television, \$40 for personal care items, \$40 for entertainment, and \$70 for a credit card payment.

Ms. C's household consists of herself and three children under the age of nine years.<sup>16</sup> They live in an apartment and she pays \$850 per month in rent. Her other main monthly expenses are \$480 for food, \$215 for a car payment, \$280 - \$320 for gasoline, \$15 for vehicle maintenance, \$50 for electricity, \$80 for phone service, \$156 for child care, \$100 for personal care items, \$50 for entertainment, \$105 for health insurance, and \$15 for renter's insurance.

Mr. C testified at the hearing that he quit his job at NN because it looked at the time as though his fiancé would be getting a good job with the Federal Aviation Administration (FAA) in Houston, Texas. His plan was to move to Houston and obtain another position with NN there. Mr. C submitted a quote from a moving company dated June 30, 2012 for moving his household from Anchorage to Houston.<sup>17</sup> Mr. C testified that his household ended up not moving to Houston

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<sup>8</sup> Ex. 6 p. 1; undisputed hearing testimony.

<sup>9</sup> Undisputed hearing testimony.

<sup>10</sup> Ex. 1 p. 2; E C hearing testimony.

<sup>11</sup> Ex. 8. This income was used to calculate his child support at \$696 per month in 2011.

<sup>12</sup> Ex. 8; E C hearing testimony.

<sup>13</sup> Ex. 8; E C hearing testimony.

<sup>14</sup> Ex. 1 p. 2; E C hearing testimony. Mr. C' girlfriend works at a no name company (Ex. B p. 1).

<sup>15</sup> All factual findings in this paragraph based on Ex. 12 p. 2; Ex. B p. 4; and E C hearing testimony.

<sup>16</sup> All factual findings in this paragraph based on Ex. 11 p. 1 and N C's hearing testimony.

<sup>17</sup> Ex. 12 p. 1.

because the job that his fiancé was going to take fell through, and because he and his fiancé wanted to stay close to their families in Anchorage.

Mr. C stated on cross examination that he did not have a new position in Texas lined up when he quit his NN job in Anchorage, and that, when reapplying for the Texas job, he would not have had any hiring preference. He stated that he could not get his Anchorage NN job back because NN was not recruiting, but he also acknowledged that he had not looked “lately” to see if NN was again hiring. He testified that he was currently looking for another high-paying job like the one he left at NN.

When Mr. C testified at the hearing on March 28, 2013, he indicated that he was still employed with NNI at that time. However, on May 3, 2013, CSSD filed a copy of a notification form from NNI indicating that Mr. C stopped working for NNI on March 9, 2013, 19 days prior to the hearing, and that he received his last paycheck from NNI on March 21, 2013.<sup>18</sup> After CSSD filed the notification form, Mr. C had 17 days before the record closed to contest the information it contained, but he did not do so.

### **III. Discussion**

#### *A. The Burden of Proof is on Ms. C as the Appellant*

As the person who filed the appeal in this case, Ms. C has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD’s Modified Administrative Child Support and Medical Support Order dated January 18, 2013 is incorrect.<sup>19</sup>

#### *B. Modification of Child Support Awards*

Under Civil Rule 90.3, a child support award may be modified upon a showing of a material change of circumstances.<sup>20</sup> A material change of circumstances will be presumed if the monthly child support amount, as calculated under Civil Rule 90.3, is more than 15 percent greater or less than under the previous child support order.<sup>21</sup> Modifications are effective on the first of the month after a notice of petition for modification is served on the opposing party.<sup>22</sup>

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<sup>18</sup> Ex. 13 p. 1.

<sup>19</sup> 15 AAC 05.030(h).

<sup>20</sup> Civil Rule 90.3(h)(1).

<sup>21</sup> Civil Rule 90.3(h)(1).

<sup>22</sup> 15 AAC 125.321(d).

C. *What is the Correct Child Support Amount?*

Mr. C urges that his child support obligation be reduced because he earns much less at NNI than he did previously with NN. CSSD initially accepted that argument when it granted Mr. C' modification request. Ms. C asserts on appeal that Mr. C' child support obligation should not be reduced because he quit his higher-paying job at NN just to avoid paying child support.<sup>23</sup> Based on the information obtained through the hearing process, CSSD has changed its position and now also asserts that Mr. C is voluntarily and unreasonably unemployed or underemployed, and that potential income should be attributed to him based on what he was earning while he was employed with NN.<sup>24</sup>

Potential income can be imputed to a parent who is voluntarily and unreasonably unemployed or underemployed.<sup>25</sup> Potential income is generally not imputed absent evidence of available job opportunities.<sup>26</sup> However, Mr. C bears the burden of proving his current earning capacity and of showing that his underemployment or unemployment is involuntary.<sup>27</sup> During the hearing, Mr. C' explanation as to why he stopped working at NN and began working at NNI seemed credible. However, CSSD submitted evidence following the hearing that Mr. C was no longer employed by NNI at the time of the hearing. Mr. C did not disclose this significant fact. That Mr. C concealed this information makes the rest of his testimony less credible.

Mr. C admitted he left his job at NN voluntarily. At first blush that termination of employment appears to have been reasonable – the moving company quote seems to corroborate his testimony that he was moving out of state. However, Mr. C did not provide any explanation for the termination of his employment at NNI; in fact, the evidence indicates that he knowingly misrepresented his circumstances at the time of the hearing. Ultimately, the fact that this was the second job Mr. C has quit or lost within one year suggests he has a pattern of leaving successful employment voluntarily and unreasonably. More importantly, it makes it appear likely that both of Mr. C' recent employment terminations were voluntary and that both were motivated by an attempt to avoid his child support obligation.

As previously noted, Mr. C has the burden of proving that he is not voluntarily and unreasonably unemployed or underemployed. He has not met this burden. Based on all the

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<sup>23</sup> Ex. 7; N C hearing testimony.

<sup>24</sup> See CSSD's Second Submission to Record dated May 3, 2013.

<sup>25</sup> Civil Rule 90.3(a)(4); see also *Tillmon v. Tillmon*, 189 P.3d 1022, 1030 (Alaska 2008).

<sup>26</sup> See *O'Connell v. Christenson*, 75 P.3d 1037, 1041 (Alaska 2003) (it must be clear that employment opportunities exist before income may be imputed).

<sup>27</sup> See *Kowalski v. Kowalski*, 806 P.2d 1368 - 1370 (Alaska 1991).

evidence in the record, it is more likely than not that Mr. C' terminations from his jobs at NN *and* NNI were both voluntary and unreasonable. The income he previously earned at NN should therefore be imputed to him. When that income is imputed to Mr. C, the result is the same income he was earning in 2011 when his child support was calculated at \$696 per month. Thus, there is no material change of circumstances that would justify modifying his support obligation. Accordingly, CSSD's order granting Mr. C' modification request is vacated and Mr. C' child support obligation is returned to its former amount of \$696 per month, as of January 1, 2013.

#### **IV. Conclusion**

Based on the evidence in the record, Ms. C met her burden and proved, by a preponderance of the evidence, that CSSD's Modified Administrative Child and Medical Support Order of January 18, 2013 was incorrect. Mr. C is voluntarily and unreasonably unemployed or underemployed. As a result, his former income should be imputed to him and thus, there is no material change in circumstances. Mr. C' child support obligation should be returned to its former amount of \$696 per month, as of January 1, 2013. No variance under Civil Rule 90.3(c) was requested or granted.

#### **V. Child Support Order**

- CSSD's Modified Administrative Child Support and Medical Support Order dated January 18, 2013, is vacated;
- Mr. C' child support obligation for L is returned to the previous amount of \$696 per month, as of January 1, 2013.

DATED this 23rd day of August, 2013.

*Signed*  
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Jay Durych  
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 10<sup>th</sup> day of September, 2013.

By: Signed  
Signature  
Jay D. Durych  
Name  
Administrative Law Judge  
Title

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