

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

In The Matter of:)

T M. C)

) OAH No. 13-0470-CSS

) CSSD Case No. 001153122

DECISION AND ORDER

I. Introduction

This case involves obligor T M. C' appeal of an order denying modification of his child support obligation that was issued by the Child Support Services Division (CSSD) on March 8, 2013. Based on the evidence in the record, CSSD's decision denying modification is affirmed. Mr. C' child support obligation remains at \$1,667 per month, as set in CSSD's Administrative Child and Medical Support Order dated October 3, 2008.

II. Facts

A. Material Facts¹

Mr. C and M J. Q have a daughter, N, age five.² N has been in the custody of Ms. Q since October 2008 or before. Ms. Q and N live outside Alaska in another state.

Mr. C is married to, but separated since 2009 from, J C, who lives in Virginia with the couple's three children.³ The children are M (age six), F (age nine), and T (age 12).⁴ Mr. C' monthly child support obligation for his three children in Virginia is currently between \$3,000 - \$4,000.⁵ An unsworn written statement by J C states that Mr. C paid her child support of \$7,200 for 2009, \$10,800 for 2010, and \$7,550 for 2011.⁶ Records of the Virginia Division of Child Support Enforcement indicate that, as of April 1, 2013, Mr. C owed \$114, 963.20 in past-due child support to J C.⁷

¹ The facts are taken from Mr. C' hearing testimony unless otherwise cited.
² Ex. 1 p. 1; M Q hearing testimony (sources for entire paragraph).
³ Ex. 9. p. 2; Ex. A p. 1.
⁴ Ex. A pp. 2 - 4; Ex. B p. 1; T C hearing testimony.
⁵ T C hearing testimony.
⁶ Ex. A p.1.
⁷ Ex A pp. 6 - 8.

Mr. C was formerly a truck driver. He had to stop driving when his regular driver's license and his commercial driver's license were revoked on or about June 2012. He now operates an excavator, which he can legally do without needing a commercial driver's license.

Mr. C owns an interest in several business entities including No Name, LLC; No Name, Inc.; and No Name Construction, LLC. No Name, LLC has previously owned apartments and a hotel and bar, but the hotel and bar were sold in 2006.

Mr. C has a fifty percent ownership interest in No Name Construction, LLC, which is currently his primary employer. He performs excavation and earthmoving work for No Name. Sometimes the work is local; sometimes it is remote. He took draws of \$2,000 per month from No Name during 2012. He does not write checks or use a checking account, and so his monthly draws are taken in cash.

Mr. C and his business entities own two parcels of real property. One property is a single family home, which he personally owns, and which he leases to tenants. The other property is an 8-plex apartment building owned by No Name, LLC.⁸

Mr. C rents his apartment or living quarters from No Name Construction. He pays \$300 per month for rent, which includes heat, electricity, water, and wastewater. His monthly cell phone bill is about \$100, but his phone bill is paid by No Name. He has a truck, titled in his name, which he mostly uses for work. No Name Construction pays for the gas and maintenance costs of the vehicle. No Name also pays about \$800 per year for insurance for the truck and two other vehicles. Mr. C estimates that he spends about \$150 per month for food, and another \$100 per month for clothing and personal care items.

Mr. C filed several income tax returns, Form 1040, all of them with a Schedule E attached. These various schedules indicate that Mr. C' interests in No Name, LLC; No Name, Inc.; and No Name Construction, LLC lost a total of \$41,823 in 2008;⁹ lost \$106,982 in 2009;¹⁰ earned \$2,868 in 2010;¹¹ and lost \$182 in 2011.¹² However, an IRS Wage and Income Transcript dated November 22, 2011 indicates that Mr. C received \$19,368 in distributions from No Name Construction during

⁸ Mr. C testified that management of the 8-plex has been contracted to a professional building management company, and that he was not aware of whether the 8-plex was fully rented.

⁹ Ex. B p. 69.

¹⁰ Ex. B pp. 54, 63.

¹¹ Ex. B p. 39

¹² Ex. B pp. 24, 25.

December 2010,¹³ Also, a Schedule E-1 for 2011 indicates that Mr. C received \$30,290 in distributions from No Name Construction that year.¹⁴

Mr. C' individual tax returns indicate he reported losses of \$22,642 in 2008;¹⁵ \$73,507 in 2009;¹⁶ \$70,224 in 2010;¹⁷ \$87,630 in 2011;¹⁸ and \$87,206 in 2012.¹⁹

Mr. C' current debt includes child support owed to the state of Arizona in the amount of \$2,755²⁰ and credit card debt owed to No Name in the amount of \$22,325.40.²¹ In addition, his company No Name Construction is approximately \$17,860 in arrears in payment of property taxes on several parcels of real property, at least one of which is currently under foreclosure.²² No Name Construction is also approximately \$416 in arrears in payment of its electric bill.²³

B. Procedural History

CSSD originally set Mr. C' child support for N at \$1,667 per month beginning November 1, 2008.²⁴ This child support amount was based on annual gross income of \$153,089 and adjusted annual income of \$110,099.²⁵ On December 5, 2012, Mr. C requested modification of the 2008 child support order.²⁶ On March 8, 2013, CSSD issued an order denying Mr. C' modification request based on CSSD's finding that Mr. C had failed to provide evidence showing a substantial change in circumstances.²⁷

On April 5, 2013 Mr. C appealed CSSD's denial of his request for modification of his child support obligation.²⁸ On his appeal form Mr. C stated in relevant part as follows:²⁹

[M]y income does not reflect the amount I'm being asked to pay, and my financial circumstances have dramatically changed in that my Alaska Driver's License has been revoked because I am unable to make full child support payments. I have

¹³ Ex. 10 p.2.
¹⁴ Ex. 10 p. 3.
¹⁵ Ex. B pp. 65, 75 - 77.
¹⁶ Ex. B p. 50.
¹⁷ Ex. B p. 32.
¹⁸ Ex. B p. 21.
¹⁹ Ex. B p. 11.
²⁰ Ex. B pp. 1 - 2.
²¹ Ex. D p.1.
²² Ex. C pp. 14 - 19.
²³ Ex. C pp. 14 - 19.
²⁴ Ex. 1.
²⁵ Ex. 1 p. 7.
²⁶ Ex. 2.
²⁷ Ex. 5.
²⁸ Ex. 6.
²⁹ Ex. 6.

worked as a Commercial Truck Driver in the state of Alaska for almost 10 years and without my license I am unable to gain employment in my field.

Mr. C' hearing was held on May 8, 2013. Mr. C attended the hearing with his mother, D C, who assisted him. Ms. Q participated in the hearing by telephone. Child Support Specialist Andrew Rawls attended the hearing and represented CSSD; Jeff Rooks and Melissa Prather of CSSD also attended the hearing. The record was left open for post-hearing filings through June 24, 2013, at which time the record closed.

III. Discussion

A. Mr. C, as the Appellant, Bears the Burden of Proof in this Case

As the person who filed the appeal in this case, Mr. C has the burden of proving by a preponderance of the evidence that CSSD's order denying modification was incorrect.³⁰

B. CSSD was Correct to Deny Mr. C' December 2012 Request for Modification in its Order Dated March 8, 2013

Child support orders may be modified only upon a showing of good cause and material change in circumstances.³¹ If a party's new financial circumstances would result in a new child support obligation more than 15% higher or lower than the amount due under the previous support order, Civil Rule 90.3(h) assumes a material change in circumstances has been established, and the child support order may be modified. In this case, Mr. C' current child support obligation was based on annual gross income of \$153,089. Mr. C' most recent income information, his individual tax return for 2012, indicates a loss of \$87,206. Thus, Mr. C' current income, at least for federal income tax purposes, is zero. If accepted, this income level appears to satisfy the threshold test for modification of child support under Civil Rule 90.3(h).

However, for child support purposes, Mr. C' current income is clearly not zero. First, Mr. C received owner draws of \$2,000 per month from No Name Construction during 2012. In addition, No Name pays for Mr. C' vehicle-related expenses, which he would normally have to pay for himself.

Further, Mr. C' hearing testimony was generally not credible because many of his answers to questions were evasive. First, when asked how he supported himself given his business losses, he stated that he had profits in some areas, and losses in other areas, and that he could not explain it

³⁰ 15 AAC 05.030(h).

³¹ AS 25.27.190(e).

because it was "very complicated." Second, his response to certain questions from CSSD's hearing representative regarding his income, which he should have been able to respond to at least in simple terms, was "I don't know, I'm not an accountant." Finally, Mr. C neglected to mention his ownership of certain real property while being questioned by the administrative law judge, and only disclosed the information later when cross-examined on the issue by CSSD's hearing representative.

In summary, Mr. C bears the burden of proving his current earning capacity.³² While Mr. C *may* currently be earning less income than he was in 2008, he did not prove this by a preponderance of the evidence because his testimony regarding his current income was not credible. Based on the evidence in the record, it cannot be said that it is more likely than not that Mr. C' income has decreased sufficiently that his child support obligation should be modified. Mr. C has therefore failed to prove that there has been a material change of circumstances since his current child support obligation was set in October 2008. Accordingly, Mr. C does not currently qualify for modification of his child support obligation.

IV. Conclusion

The person appealing a CSSD decision, in this case, Mr. C, has the burden of proving by a preponderance of the evidence that CSSD's decision was incorrect.³³ Mr. C failed to satisfy this burden of proof. Accordingly, CSSD's order dated March 8, 2013, denying modification of Mr. C' child support obligation, must be affirmed.

No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

1. CSSD's Decision on Request for Modification Review dated March 8, 2013 is affirmed;
2. Mr. C' child support shall remain at \$1,667 per month, as set in CSSD's Administrative Child Support and Medical Support Order dated October 3, 2008.

DATED this 8th day of October, 2013.

By: Signed
Jay Durych
Administrative Law Judge

³² *Kowalski v. Kowalski*, 806 P.2d 1368 - 1370 (Alaska 1991).

³³ 15 AAC 05.030(h).

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 4th day of November, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Commissioner
Title

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