

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

IN THE MATTER OF)	OAH No. 13-1179-CSS
S C. C)	CSSD No. 001137556 & 001187250
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is S C. C's appeal of the orders establishing his child support for his children B, S and T. Z L. G C, the children's mother, is not the custodial parent. The children are in a foster care placement in state custody. The Child Support Services Division (Division) issued the child support orders due to Mr. C being in prison for an extended time. There is a court custody order giving Mr. C primary custody of the children when they are not in state custody. The Division set Mr. C's ongoing child support obligation, by setting it at the minimum monthly amount of \$50, based on his incarceration. The Division set Mr. C's arrears for 2012 at \$144 per month for the three children, based on his annual income for that year.

Mr. C requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on September 17, 2013. Mr. C participated. Ms. G C was not notified of the hearing because of the court custody order giving primary custody to Mr. C. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on the day of the hearing.

At the hearing, Mr. C explained that he did not understand that should have a child support obligation when he is not able to pay even \$50 per month because he is incarcerated.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order should be upheld. Mr. C's 2012 child support was set based on his income for that year. The law requires that child support be set at no less than \$50 per month.

II. Facts

This case is an establishment action.¹ Two child support cases were established by the

¹ Alaska Civil Rule 90.3(a).

Division to account separately for the periods when the children were in federal and non-federal foster care. Mr. C did not have a duty to provide child support for his children, B, S and T, prior to his incarceration because they lived with him under a court order granting him primary custody.²

The Division initiated the establishment action because the children are in state custody in a foster care placement. B, S and T went into state custody in July of 2012. Paternity is not now in dispute. Mr. C is named as B and S's father on the children's birth certificates. Mr. C's paternity of T was established after genetic testing.³

The Division issued an Administrative Child and Medical Support Order on May 16, 2013.⁴ Mr. C appealed the child support order.⁵

The Division issued an Amended Administrative Child and Medical Support Order covering both cases on July 10, 2013.⁶ The Division set Mr. C's monthly 2013 arrears and monthly ongoing child support at \$50. The order also established arrears for 2012 beginning in July of 2012 at \$144 per month.⁷

Mr. C requested a formal hearing.⁸ At the hearing, Mr. C explained that he could not pay down his arrears or pay \$50 per month while he was in prison waiting for trial. Mr. C explained that he understood that the children were living with a relative, and that he was willing to help support his children, but did not have the ability to pay the amount of support that the Division had ordered.⁹

Based on the evidence in the record, I find that the Division's calculations used to set his arrears and ongoing child support, and the income used in those calculations, were correct.¹⁰

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. C, has the

² Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

³ Division's Pre-hearing Brief, page 1 & Recording of Hearing.

⁴ Division's Pre Hearing Brief, page 1 & Exhibit 1.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 7.

⁸ Exhibit 9.

⁹ Recording of Hearing.

¹⁰ Exhibit 7, page 11& 12, Exhibit 10 & Recording of Hearing-Testimony of Mr. C.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Mr. C did not provide evidence at the hearing showing that the Division's order was incorrect. Mr. C was concerned about his children and wanted to understand the paperwork sent to him by the Division. Mr. C also explained that he knew that not every state has minimum child support orders, and did not understand how he could be asked to pay child support while he was unable to earn any money.

The Division correctly set Mr. C's ongoing child support at the minimum amount of \$50 per month based on Mr. C's continued lack of income due to his incarceration. Alaska law requires that child support be set at no less than \$50 per month, and the Alaska Supreme Court has said that a minimum order is generally appropriate when an obligor is incarcerated.¹² The Division could not set Mr. C's modified ongoing child support obligation below this amount.

The Division correctly set Mr. C's arrears for 2012 at \$144 per month for the three children based on his reported income in 2012. Child support is calculated based on annual income.

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) without variance.

V. Child Support Order

The Division's Amended Administrative Child and Medical Support Order issued on July 10, 2013 is affirmed.

DATED this 20th day of September, 2013.

By: Signed _____
Mark T. Handley
Administrative Law Judge

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² See *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 13 (Alaska 1994).

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 14th day of October, 2013.

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

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