

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

IN THE MATTER OF)	OAH No. 13-1659-CSS
K R. T)	CSSD No. 001183077
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is K R. T’ appeal of the Child Support Service Division’s (Division’s) child support order for his children, W and X.

On December 11, 2013, a formal hearing was held to consider Mr. T’ appeal.¹ Mr. T participated in the hearing. The custodial parent, B R. N did not participate.² Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be adjusted by setting Mr. T’ ongoing child support at \$50 per month for two children.

II. Facts

Mr. T’ child support for his child, X, was previously last set in 2012 at \$50 per month.³ The Division initiated a modification action to add W, because W also began to receive public assistance in July of 2013.⁴ Mr. T’ paternity of W, the new child added to the order, is not in dispute.⁵

The Division issued notice of the petition for modification on September 20, 2013.⁶ The Division issued Modified Administrative Child and Medical Support Order on October 30, 2013.

The Division’s orders set Mr. T’ ongoing child support obligation at \$201 per month, effective October 1, 2013. This monthly amount was calculated using imputed minimum wage

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.
² Ms. N did not appear or provide a phone number to call for the hearing as instructed in the notice sent to her. Ms. N did not answer at her phone numbers of record at the time set for the hearing.
³ Exhibit 2 & the Division’s Pre-Hearing Brief, page 1.
⁴ Exhibit 4, page 9.
⁵ Exhibit 3. Recording of Hearing.
⁶ Exhibit 3.

earnings to Mr. T.⁷ Arrears for W were also established going back to July of 2013.⁸

Mr. T requested a formal hearing.⁹ At the time of the hearing, Mr. T was incarcerated and would not be released for sixteen months.¹⁰ At the hearing, Mr. T explained that he could not pay \$201 or even \$50 per month while he was in prison. Mr. T also has another \$50 per month ongoing child support order for children with a different mother.¹¹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹² Mr. T showed that his ongoing child support should be set at a minimum order.

In setting his modified ongoing child support amount at \$201, the Division had imputed minimum wage income to Mr. T. Child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.¹³ The Division had imputed minimum wage income based on the assumption that Mr. T could earn that much. A noncustodial parent who voluntarily reduces his or her income does not automatically receive a corresponding reduction in his or her child support obligation.¹⁴ If Mr. T could earn a minimum wage income, but was unreasonably unemployed, it would be appropriate to base his child support amount on minimum wage earnings rather than setting his child support at the minimum based on his lack of income.

A parent who is in jail cannot earn a significant income. It is not appropriate to impute income to an individual who cannot work due to incarceration even though the parent may have taken what could be characterized as unreasonable actions that led to his incarceration and loss of earnings.¹⁵ Because Mr. T is incarcerated he will not be able to earn the income that his child support increase to \$201 per month in the modification was based on. Mr. T' incarceration limits his earning capacity to almost nothing.

⁷ Exhibit 4, page 8.

⁸ Exhibit 4, page 9.

⁹ Exhibit 5.

¹⁰ Recording of Hearing-Testimony of Mr. T.

¹¹ Recording of Hearing.

¹² Alaska Regulation 15 AAC 05.030(h).

¹³ Civil Rule 90.3 Commentary, Part III-C.

¹⁴ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

At the hearing, the Division agreed that Mr. T' modified ongoing child support should be set at the minimum amount of \$50 per month for the two children based on his 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.¹⁶ Mr. T' modified ongoing child support obligation for W and X cannot be set below this amount.

IV. Conclusion

I conclude that W was correctly added to Mr. T' order for X. Mr. T' modified ongoing child support should be set at \$50 per month for these two children. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. T owes ongoing child support for W and X in the monthly amount of \$50 for two children, effective October 1, 2013.
2. Mr. T is not liable for additional child support arrears for W because the monthly amount of the order is same.

All other provisions of the Division's Modified Child Support and Medical Support Order issued on October 30, 2013 remain in effect.

DATED this 12th day of December, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁵ *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998).

¹⁶ *See Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d (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 30th day of December, 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.]