

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

IN THE MATTER OF	)	OAH No. 13-1721-CSS
S S. Q	)	CSSD No. 001148189
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is S S. Q's appeal of the Child Support Service Division's (Division's) child support order for his children, F and K.

On December 18, 2013, a formal hearing was held to consider Mr. Q's appeal.<sup>1</sup> Mr. Q participated in the hearing. The custodial parent, D C. G also participated. Russell L. Crisp, 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. Q's modified ongoing child support at \$201 per month for two children.

**II. Facts**

Mr. Q's child support for his child, K, was previously last set in 2007 at \$70 per month for one child.<sup>2</sup> The Division initiated a modification action to add F, because Ms. G filed a request for the Division's services in May of 2013.<sup>3</sup> Mr. Q's paternity of F, the new child added to the order, is not in dispute. Paternity was established after genetic testing.<sup>4</sup>

The Division issued notice of the petition for modification on August 22, 2013.<sup>5</sup> The Division issued Modified Administrative Child and Medical Support Order on October 17, 2013.

The Division's order set Mr. Q's ongoing child support obligation at \$159 per month, effective September 1, 2013. This monthly amount was calculated using reported earnings for Mr. Q.<sup>6</sup> Additional arrears for F at \$41 per month were also established going back to June of

---

<sup>1</sup> The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.  
<sup>2</sup> Exhibit 2 & the Division's Pre-Hearing Brief, page 1.  
<sup>3</sup> Exhibit 1.  
<sup>4</sup> Recording of Hearing.  
<sup>5</sup> Exhibit 4.  
<sup>6</sup> Exhibit 5, page 8.

2013.<sup>7</sup>

Mr. Q requested a formal hearing, explaining that he could not afford the increase in child support because he works mostly seasonal jobs and is living on his unemployment benefits. Mr. Q also asserted that he provided diapers and other supplies for the children.<sup>8</sup>

Prior to the hearing, the Division recalculated Mr. Q's child support order using updated income information.<sup>9</sup> The Division also provided Mr. Q's earnings for the past several years reported from his employers.<sup>10</sup>

At the beginning of the hearing, Mr. Q was given the option of withdrawing his appeal, and warned that this updated income information and the Division's new calculations could result in an increase in his modified child support through the hearing process. Mr. Q chose to have the hearing.<sup>11</sup>

At the hearing, Mr. Q asked for genetic testing to confirm that he was K's father. Mr. Q also explained that he was unemployed and did not believe he could afford any increase in his child support. Mr. Q lives alone and works intermittently as a construction laborer for the No Name School District and as a no name.<sup>12</sup>

Ms. G testified at the hearing and explained why she believed Mr. Q was an alcoholic. Ms. G also explained that the last time she had received any diapers or other supplies for the children from Mr. Q was almost a year ago.<sup>13</sup>

Based on the evidence in the record, I find that it is more likely than not that Mr. Q is not unreasonably underemployed, and the Division's latest calculations showing that his modified ongoing child support should be set at \$201 per month for the two children use the best estimate of his current annual income and are correctly calculated.<sup>14</sup>

### **III. Discussion**

This case is Mr. Q's appeal of a modification of his existing child support order for K,

---

<sup>7</sup> Exhibit 5, page 9.

<sup>8</sup> Mr. Q's appeal is found at Exhibit 6.

<sup>9</sup> Exhibit 9.

<sup>10</sup> Exhibit 8.

<sup>11</sup> Recording of Hearing.

<sup>12</sup> Recording of Hearing- Testimony of Mr. Q.

<sup>13</sup> Recording of Hearing- Testimony of Ms. G.

<sup>14</sup> Recording of Hearing & Exhibits 8 & 9.

which has been in effect since 2007.

As explained at the hearing, this appeal is not an appropriate forum for Mr. Q to attempt to challenge his paternity of K. Both Mr. Q's paternity of K and his legal obligation to pay child support for her have been established for several years. If Mr. Q wants to try to disestablish his paternity of K, he would have to initiate an action in court.<sup>15</sup> It appeared also that his desire to seek genetic testing for K was based on his Mr. Q's misunderstanding of Ms. G request for genetic testing for F. Mr. Q's paternity of F was established after genetic testing and was not in dispute at the hearing.

Ongoing child support should be calculated based using the best estimate of Mr. Q's income or earning capacity unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is need to prevent an injustice.<sup>16</sup> The new amounts calculated by the Division are correct. Mr. Q did not dispute that updated income information used in this calculation was correct. The annual income in this calculation is low and is similar to the income Mr. Q earned in previous years. There is not clear and convincing evidence in the record showing that an injustice will occur if ongoing child support is set at those amounts. Mr. Q lives by himself and he does not have other children to support. Ms. G has medical problems that limit her ability to work.

Although there is not clear and convincing evidence that Mr. Q's child support should be set lower than the amount calculated by the Division, it would not be appropriate to impute additional income to Mr. Q in setting his support due to his failure to work year-round. Child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.<sup>17</sup> A noncustodial parent who voluntarily reduces his or her income does not automatically receive a corresponding reduction in his or her child support obligation.<sup>18</sup>

If Mr. Q could earn more income, but was unreasonably unemployed, it would be

---

<sup>15</sup> AS 25.27.166(a)(2).

<sup>16</sup> See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

<sup>17</sup> Civil Rule 90.3 Commentary, Part III-C.

<sup>18</sup> *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

appropriate to set Mr. Q's child support based on income he could earn. It is not appropriate to impute income to Mr. Q. The evidence in the record does not show unreasonable underemployment because of Mr. Q's alcoholism and the limited employment opportunities in the area where he lives for someone with his job skills.

#### **IV. Conclusion**

Mr. Q's modified ongoing child support should be set at \$201 per month for the two children based on the Division's latest calculation at exhibit 9. I conclude that F was correctly added to Mr. Q's order for K. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

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

1. Mr. Q's paternity of F is established.
2. Mr. Q owes ongoing child support for F and K in the monthly amount of \$201 for two children, effective September 1, 2013.
3. Mr. Q liable for additional child support arrears for F in the amount of \$41 per month for the months of June 2013 through August 2013.

All other provisions of the Division's Modified Child Support and Medical Support Order issued on October 17, 2013 remain in effect.

DATED this 23rd day of December, 2013.

By: Signed  
Mark T. Handley  
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 14<sup>th</sup> day of January, 2014.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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