

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

IN THE MATTER OF:	)	
	)	OAH No. 14-0346-CSS
K B. C	)	CSSD No. 001180517
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, K B. C, appealed a Modified Administrative Child Support and Medical Support Order that CSSD issued in her case on February 3, 2014. The obligee child is U, 17. The custodian of record is K K.

The formal hearing was held on April 2, 2014. Both Ms. C and Mr. K participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated February 3, 2014 is vacated. Ms. C remains liable for child support in the amount of \$126 per month.

**II. Facts**

*A. Procedural History*

Ms. C's child support was set at \$126 per month in November 2012.<sup>1</sup> Mr. K requested a modification review on September 13, 2013.<sup>2</sup> On October 30, 2013, CSSD issued a Notice of Petition for Modification Review.<sup>3</sup> On February 3, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. C's modified ongoing child support at \$250 per month, effective November 1, 2013.<sup>4</sup> Ms. C appealed and requested a formal hearing on February 24, 2014.<sup>5</sup>

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1 Exh. 1.  
2 Exh. 2.  
3 Exh. 3.  
4 Exh. 7.  
5 Exh. 8.

*B. Material Facts*

Based on the record as a whole, the following facts are established by a preponderance of the evidence.

Ms. C and Mr. K are the parents of U, 17, who has lived full-time with Mr. K in Louisiana since he was about ten years old.

Ms. C lives in No Name with her husband, T, their 5-year-old named S, and J, their youngest. Ms. C had medical complications related to her pregnancy with J; she was put on bed rest and transferred to Anchorage to be near advanced medical facilities while awaiting the child's birth in February 2013.<sup>6</sup> J is now well over one year old and there is no evidence in the record that Ms. C has any medical issues that would interfere with her ability to pay child support for U.

T C is an E-5 with 9 years of service in the United States Coast Guard. An no name mechanic, his taxable wages in 2013 were \$33,039.<sup>7</sup> During CSSD's questioning at the hearing, Ms. C confirmed that her husband is on no name status and receives no name pay. CSSD asserted that this would significantly increase Mr. C's income, but there was no request for Ms. C to document her husband's income. As a result, there is no evidence in the record just how much Mr. C's no name status might increase his income.

In January 2014,<sup>8</sup> Mr. C was issued travel orders in preparation for a transfer to a new duty station in No Name on June 1, 2014.<sup>9</sup> The Cs sold their second vehicle about three months before leaving No Name, primarily because they were concerned they might not be able to sell it closer to their departure date. Ms. C testified that they advertised it in order to test the waters of the market, and upon receiving what they considered to be a generous offer, went ahead and sold the vehicle.

Ms. C plans to look for work upon getting settled in their new quarters in No Name. She will have to secure full-time daycare for J, which is \$600 per month. S will be starting kindergarten, so only part-time daycare will be needed for him. Ms. C does not know if jobs will be available on post, and most jobs in the local community require fluency in No Name. She

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<sup>6</sup> Some of the facts in this case are taken from the child support decision when Ms. C's case was first established. *In the Matter of K B. C.*, OAH No. 12-0327-CSS (Commissioner of Revenue 2012).

<sup>7</sup> Ms. C's testimony.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 8 at pg. 3.

said she plans to take one of the No Name language classes that are offered at the learning center on base.

Mr. K, a self-employed carpenter, is married to Z, and they are expecting their first child in early July 2014. This is a high-risk pregnancy, so Z may be required to take leave from her employment earlier than planned. Her employer does not provide paid maternity leave, so they will be without her income for a period of time while she recovers from the birth of their child. When she returns to her employment, she and Mr. K will have to obtain full-time daycare for the baby. Mr. K does not have medical insurance, so they are also searching for affordable health care options for him. The K's combined income in 2013 was approximately \$85,000.

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>10</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. Ms. C’s child support has been \$126 per month since November 2012. Thus, a child support calculation of \$144.90 or higher would be sufficient to warrant modification in this case.<sup>11</sup>

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.<sup>12</sup> In this case, the notice was issued on October 30, 2013, so any modification of Ms. C’s child support obligation for U would be effective as of November 1, 2013.<sup>13</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.<sup>14</sup> Ms. C filed the appeal, so she has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated February 3, 2014 is incorrect.

Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. Ms. C is unemployed, so she does not have an income from which to

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<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> \$126 x 1.15 = \$144.90.

<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> Exh. 3.

<sup>14</sup> 15 AAC 05.030(h).

calculate a child support figure. After hearing all of the testimony and reviewing the documents that were submitted for the hearing, CSSD asserted in its closing argument that Ms. C is voluntarily and unreasonably unemployed.

If a parent is found to be voluntarily and unreasonably unemployed, his or her child support amount may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."<sup>15</sup>

In cases in which voluntary unemployment is alleged, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."<sup>16</sup> It is also necessary to determine whether the parent's unemployment or underemployment is unreasonable. An integral part of the analysis is whether the parent's lack of employment is a result of "economic factors," as in being laid off, or of "purely personal choices."<sup>17</sup> It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a noncustodial parent.<sup>18</sup> The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income to a party based on voluntary unemployment."<sup>19</sup>

After careful consideration, CSSD's argument that Ms. C is voluntarily and unreasonably unemployed is denied. This is the second appeal in which this claim has been made against Ms. C. In 2012, the claim was denied because she established that her unemployment was not the result of a personal choice on her part to be unemployed. The facts in that appeal were that Ms. C had consistently sought, but had been unable to secure, employment in No Name, where she was residing at the time with her husband. Also, at that September 2012 hearing, Ms. C established that she had been put on bed rest for a complicated pregnancy.<sup>20</sup>

Fast forward to the 2014 appeal: Ms. C's youngest child, J, was born in February 2013. Mr. K filed a petition for modification in September 2013, a sensible amount of time to wait following J's birth. It would have been reasonable for Ms. C to ramp up her job seeking efforts

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<sup>15</sup> Civil Rule 90.3(a)(4).

<sup>16</sup> *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

<sup>17</sup> *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

<sup>18</sup> *Kowalski*, 806 P.2d at 1371.

<sup>19</sup> Civil Rule 90.3, Commentary III.C.

<sup>20</sup> *In the Matter of K B. C.*, OAH No. 12-0327-CSS, pg. 4 (Commissioner of Revenue 2012).

at that time, especially given the fact that Mr. K had just moved for modification of her child support order. But she did not, apparently choosing instead to wait for CSSD's modification order. However, in January 2014, Ms. C's husband received orders to transfer to a new duty station in No Name as of June 2014. As of January 2014, Ms. C could not be expected to look for work when she would have been obligated to tell a new employer that she couldn't remain on the job after May 2014. Moreover, in an abundance of caution, the Cs sold their second vehicle in about March 2014, so that would have made it all the more difficult for Ms. C to seek employment.

Once again, the evidence in its entirety does not support a finding of fact that Ms. C is voluntarily and unreasonably unemployed. At each point at which she would have been expected to seek employment, an event occurred outside of her control that made it unfeasible for her to do so. In the 2012 appeal, it was Ms. C's pregnancy and being placed on bed rest. In this case, it is Mr. C's transfer to No Name, in particular, its timing. Ms. C's decisions to defer seeking employment under these circumstances were not unreasonable.

#### **IV. Conclusion**

Ms. C met her burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order dated February 3, 2014 is incorrect. Ms. C has accompanied her Coast Guard husband to his new duty station in No Name; thus, she is not voluntarily and unreasonably unemployed. The modification order should be vacated and Ms. C's child support should remain at \$126 per month.

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

- The Modified Administrative Child Support and Medical Support Order dated February 3, 2014 is vacated;
- Ms. C remains liable for support for U in the amount of \$126 per month.

DATED this 30<sup>th</sup> day of July, 2014.

*Signed* \_\_\_\_\_  
Kay L. Howard  
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 18<sup>th</sup> day of August, 2014.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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