

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

In the Matter of:)
)
O M. E) OAH No. 14-1476-CSS
) CSSD No. 001190619
_____)

CORRECTED DECISION AND ORDER¹

I. Introduction

The custodial parent, B E, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Ms. E's case on July 15, 2014. The obligee child is C, 10 years of age.

The formal hearing was held on September 24, 2014. Mr. E was represented by his mother, U T. Ms. E did not appear and does not have a current telephone number, so she did not participate. Andrew Rawls and Mike Miller, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated July 15, 2014 is affirmed. Ms. E's child support obligation for C is modified to \$50 per month, effective July 1, 2014.

II. Facts

A. Procedural History

Ms. E's child support was set at \$254 per month in November 2013.² She requested a modification review on June 12, 2014.³ On June 23, 2014, CSSD issued a Notice of Petition for Modification Review.⁴ Ms. E did not provide income information. On July 15, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. E's ongoing child support to \$50 per month, effective July 1, 2014.⁵ Mr. E appealed and requested a formal hearing on August 5, 2014.⁶

¹ After the proposed decision was issued on October 21, 2014, a Proposal for Action was filed on behalf of B E, custodial parent. As a result, the material facts section on page 2 was corrected regarding the location of the children discussed in this matter. No other changes have been made.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 5.

⁶ Exh. 6.

B. Material Facts

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

Ms. E has three children, C, 10; D, 6; and F, 3. C and D are currently in the custody of Mr. E, the named custodian of record. Mr. E is D's biological father, not C's, but the court considers Mr. E to be C's "psychological parent" and granted custody of both children to Mr. E in the parties' divorce.⁷ F, the youngest child, has a different biological father.⁸ CSSD's last filing indicates that Mr. E was the custodian of record in Ms. E's child support case for F at some point in the past, but a post-hearing letter from Mr. E's mother insists he is not F's custodian.⁹ Regardless, F's custodian and place of residence is not relevant to the decision.

Mr. E filed a copy of Ms. E's incarceration report that was prepared by the Alaska Department of Corrections (DOC). It shows that Ms. E has been incarcerated in one of two correctional facilities almost all of the time since October 31, 2013.¹⁰ Indeed, she has been in escape or walk-away status since July 13, 2014.¹¹ Mr. E believes that the DOC is so overpopulated that there is not much, if any, effort being expended to find and detain Ms. E. According to Ms. T, the obligor has texted Mr. E since her escape in an attempt to see the children, so apparently she has remained in the local area.

Ms. E's income history is spotty, at best. She has worked and received pay from an employer during only nine quarters since 2003.¹² She earned just \$1,240 at her last job in 2008.¹³

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ 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. E's child support in this matter was set at \$254 per month in November 2013.

⁷ See Exh. 1 at pg. 7.

⁸ Exh. 11.

⁹ See CSSD's Submission to Record received on September 26, 2014.

¹⁰ Exh. 9 at pg. 1.

¹¹ *Id.*

¹² Exh. 7.

¹³ *Id.*

¹⁴ AS 25.27.190(e).

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.¹⁵ Here, the notice was issued on June 23, 2014, so any modification of Ms. E's child support obligation for C is effective as of July 1, 2014.¹⁶

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.¹⁷ Mr. E filed the appeal, so he has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated July 15, 2014 is incorrect.

Ms. E has a separate child support case for each of her children: C, D, and F.¹⁸ She is currently under an administrative or court order to pay \$50 per month for C, \$203 per month for D, and \$50 per month for F.¹⁹ Prior child support orders in this case, and the one for D, both made findings in 2013 that Ms. E was voluntarily and unreasonably unemployed.²⁰ There is no suggestion in Ms. E's order for F that the court made similar findings;²¹ it is only the administrative support orders that address this issue.

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. E is unemployed, so she does not have an income from which to calculate a child support figure. Mr. E's appeal requests that Ms. E once again be found voluntarily and unreasonably unemployed for the purpose of calculating her child support obligation for C.

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."²²

In cases in which voluntary and unreasonable unemployment is alleged, the court or administrative law judge must determine first whether the parent has engaged in voluntary

15 15 AAC 125.321(d).

16 Exh. 3.

17 15 AAC 05.030(h).

18 See CSSD's Submission to Record received on September 26, 2014.

19 *Id.*

20 *Id.*

21 Exh. 11.

22 Civil Rule 90.3(a)(4).

conduct “for the *purpose of becoming or remaining unemployed.*”²³ Even if the unemployment is voluntary, it is also necessary for the tribunal to determine whether the parent’s unemployment 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 from work, or of “purely personal choices.”²⁴ 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.²⁵ The commentary to Civil Rule 90.3 directs that tribunals “shall consider the totality of the circumstances in deciding whether to impute income to a party based on voluntary unemployment.”²⁶

After careful consideration, the claim that Ms. E is voluntarily and unreasonably unemployed is denied. The primary reason for this result is that there has been insufficient evidence submitted to prove that Ms. E has engaged in voluntary conduct “for the *purpose of becoming or remaining unemployed.*” Rather, it appears more likely than not that Ms. E’s unemployment is the direct result of her status as an escaped prisoner and that she avoids employment so as to avoid detection and incarceration. Moreover, as CSSD pointed out in the hearing, Ms. E may be in flight to avoid arrest, but she is still considered to be incarcerated.

CSSD correctly modified Ms. E’s child support to \$50 per month, effective July 1, 2014, and the order should remain in place until the first of the month following her release. A child support order of \$50 per month is the minimum amount allowed under Alaska law.²⁷ This is the typical amount that is charged for indigent parents, and it has been upheld by the Alaska Supreme Court for incarcerated individuals who have a child support obligation.²⁸

IV. Conclusion

Mr. E did not meet his burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order dated July 15, 2014 is incorrect. Ms. E may have escaped from DOC control, but she is still considered to be incarcerated. Thus, she is not voluntarily and unreasonably unemployed, and CSSD’s modification order setting her child support at \$50 per month should be affirmed.

²³ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998) (emphasis added).

²⁴ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

²⁵ *Kowalski*, 806 P.2d at 1371.

²⁶ Civil Rule 90.3, Commentary III.C.

²⁷ Civil Rule 90.3(c)(1)(B).

²⁸ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated July 15, 2014 is affirmed;
- Ms. E's child support obligation for C is modified to \$50 per month, effective July 1, 2014.

DATED this 21st day of October, 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 1st day of December, 2014.

By: *Signed* _____
Signature
Angela M. Rodell _____
Name
Commissioner _____
Title

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