

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

In the Matter of:)
)
E P. T) OAH No. 14-1503-CSS
) CSSD No. 001176765
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of E P. T for the support of his daughter, B T. The custodian of record is F O, the child's mother.

On August 9, 2011 the Child Support Services Division issued an administrative child support order for ongoing support in the amount of \$473 per month.¹ On June 23, 2011 Ms. O requested modification of the order.² On July 23, 2014 the division issued a modified administrative child support order for ongoing support in the amount of \$876 per month, effective July 1, 2014.³ Mr. T filed an appeal and requested an administrative hearing.

The Office of Administrative Hearings conducted a telephonic hearing. Both Mr. T and Ms. O participated and provided testimony. Robert Lewis represented the division.

Mr. T objects that the support order did not account for funds he had spent to maintain the parties' jointly-owned residence, which Ms. O has occupied since the couple separated in 2010. The division's regulations do not authorize a credit for Mr. T's payments, and he has not shown that it is manifestly unjust to set his ongoing support obligation based on his current income. Therefore, the division's decision is sustained.

II. Facts

E T and F O, an unmarried couple, are the parents of B T. The couple jointly purchased a lot and mobile home in Alaska in November, 2007, when B was an infant. The property is subject to a mortgage with a monthly payment of \$790 plus \$80 for taxes and reserves.⁴ Mr. T and Ms. O occupied the home until September, 2010, when Mr. T moved out. B and her mother continued to live in the home.

¹ Ex. 2.

² Ex. 3.

³ Ex. 7.

⁴ Ex. 5, p. 1.

In August, 2011 the Child Support Services Division established Mr. T's ongoing support obligation in the amount of \$473 per month, based on anticipated total income in 2011 of \$32,652.⁵ On September 21, 2012, Mr. T made a payment from his funds of \$10,000 to bring the property out of foreclosure, and since then he has made monthly payments of \$870, all without any contribution from Ms. O. From September 21, 2012 through August, 2014 Mr. T paid a total of \$30,010 on the property, of which \$15,005 was Ms. O's responsibility as the co-owner.⁶

In June, 2014 Ms. O asked the division to review the child support order for modification.⁷ The division issued an order for modified ongoing support in the amount of \$876 per month effective July 1, 2014 based on Mr. T's gross income of \$69,374.50 from his employer, No Name, Inc. from July 1, 2013 through June 30, 2014.⁸

III. Discussion

For one child, a parent's presumptive support obligation as determined under 15 AAC 125.070 is 20% of that parent's adjusted annual income,⁹ that is, total income after allowable deductions.¹⁰ When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.¹¹

In this case, the division calculated Mr. T's support obligation under 15 AAC 125.070 as \$876 per month. Mr. T has not disputed the income attributed to him and he does not deny that under 15 AAC 125.070 his support obligation is \$876 per month. He argues, however, that his prior and continuing mortgage payments should be taken into account. There are two ways that might be done: first, by providing a credit against his support obligation, or second, by reducing the support obligation pursuant to 15 AAC 125.075.

Two of the division's regulations, 7 AAC 125.105 and 7 AAC 125.465, provide for credits against a support obligation. 15 AAC 125.105(b) provides that a credit may be given against arrears that accumulate prior to the effective date of an ongoing child

⁵ Ex. 2, p. 7.

⁶ The total of \$30,010 consists of his initial payment of \$10,000, plus 23 payments of \$870.

⁷ Ex. 3.

⁸ Ex. 4, Ex. 7. *See also* Ex. 9.

⁹ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹⁰ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹¹ Civil Rule 90.3(h)(1).

support obligation for direct payments to the custodial parent if the agency determines that “the direct payment was intended by both parents to be a direct payment of child support.” This regulation is inapplicable to this case, for two reasons. First, the division is not calculating arrears. Rather, it is modifying the ongoing support obligation. Second, Mr. T did not make direct payments to Ms. T; rather, he made payments to the mortgage holder. Even if the regulation were applicable, of course, there is no evidence in this case that both Mr. T and Ms. O intended that Mr. T’s mortgage payments serve as a credit against his child support obligation. Similarly, 15 AAC 125.105(c), which provides that a credit may be given for in-kind contributions, is inapplicable because Mr. T made cash payments, not in-kind contributions, and because there was no written agreement regarding any such contributions. Lastly, 15 AAC 125.465, which provides that a credit may be given for payments “to the custodial parent” if “both parents intended the payment to be a direct payment of child support” is inapplicable because, as with respect to 15 AAC 125.105(b), Mr. T did not make payments to Ms. O and there is no evidence of an agreement between the two. In any event, the division’s decision to deny a credit under 15 AAC 125.465 is not subject to an administrative appeal.¹²

The other avenue by which Mr. T’s mortgage payments might be considered in determining his support obligation is 15 AAC 125.075. That regulation provides that the amount of the support obligation as calculated under 15 AC 125.070 may be varied upon a showing that failure to vary the support obligation will result in manifest injustice because of unusual circumstances.

That a non-custodial parent has, in addition to providing child support, paid for the residence of the children might be considered to be an unusual circumstance. However, it is not manifestly unjust that Mr. T’s ongoing support obligation be set at the presumptive amount rather than being reduced based on his prior and continuing mortgage payments.¹³ Mr. T is the co-owner of the property, and his payments are

¹² See 15 AAC 125.465(d) (“An administrative appeal is not available from the administrative review decision issued under this subsection, but the decision is final for purposes of appeal to the superior court.”).

¹³ See, e.g., In Re C.A.C., OAH No. 13-0277-CSS (Commissioner of Revenue 2013) (denying credit for “the payments [totaling \$\$5,640] he made on the mobile home and space rent. He and Ms. N. both own the home and they are both responsible for it.”; In Re R.M.K., OAH No. 11-0434-CSS (Commissioner of Revenue 2012) (denying obligor’s request “that he be given credit for the mortgage and utility payments he paid that Ms. P and the children were living in”).

intended to protect his financial interest in it, rather than to provide housing for his daughter. It may be that Ms. O is legally obligated to reimburse Mr. T for her share of the mortgage payments he has made,¹⁴ but the division's role is limited to determining child support and does not include adjudicating the parties' property rights. The civil courts provide the appropriate forum for resolving any issues the parties may have with respect to occupancy and payment for the property.

IV. Conclusion

The division correctly calculated Mr. T's support obligation under 15 AAC 125.070. The ongoing support obligation has changed by 15% or more, and it is not manifestly unjust. The modified administrative support order should therefore be affirmed.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated July 23, 2014, is **AFFIRMED**.

Dated November 5, 2014.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

¹⁴ See Wood v. Collins, 812 P.2d 951, 958 (Alaska 1991).

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 December of, 2014.

By: Signed
Signature
Angela Rodell
Name
Commissioner
Title

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