

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

IN THE MATTER OF )  
 )  
 T K. C )  
\_\_\_\_\_ )

OAH No. 14-1608-CSS  
CSSD No. 001122099

**DECISION AND ORDER**

**I. Introduction**

This case is T C’s appeal of CSSD’s modification of her administrative child support order for her minor children, W, O, and D. That order was issued by the Alaska Child Support Service Division (the Division). A formal hearing was held on October 14, 2014 to consider Ms. C’s appeal. Ms. C appeared by telephone. The children’s father, U R. C, did not participate. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on October 27, 2014.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Ms. C’s modified ongoing child support should be set at \$433.75 per month based on the parents’ estimated income in 2014. Ms. C and Mr. C have been exercising divided custody, with one of the three children covered by this order living with Ms. C. The Division recalculated child support based on a divided custody calculation, using an updated estimate for Mr. C’s income based on the median earnings of an Alaska taxi driver.

**II. Facts**

One of the three minor children, D, is living with Ms. C.<sup>1</sup> The Division had issued an Administrative Child and Medical Support Order on April 18, 2005 setting Ms. C’s ongoing child support obligation at \$376.<sup>2</sup>

The Division initiated modification of this order, issuing a notice of a petition for modification on June 2, 2014.<sup>3</sup> The parents did not respond to the Division’s order to provide their income information, but the Division was able to obtain the reported earnings information from the parents’ employers.<sup>4</sup>

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<sup>1</sup> Recording of Hearing. Mr. and Ms. C also have two children who are now adults, and are no longer covered by the order for ongoing child support.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibits 3 &8.

The Division issued a Modified Administrative Child and Medical Support Order on July 17, 2014. The Division's orders set Ms. C's modified ongoing child support obligation at \$1,185 per month, effective July 1, 2014. This order was calculated based on the assumption that all three children were living with Mr. C.<sup>5</sup>

Ms. C filed a request for a formal hearing, explaining that one of the children was living with her.<sup>6</sup> Prior to the hearing the Division prepared a new divided custody calculation. This calculation estimated Mr. C's income using earning wages reported by Mr. C's employers in 2013.

At the hearing, Ms. C explained that it was her understanding that Mr. C was working as a taxi driver in Alaska. The Division explained that, because taxi drivers are independent contractors, their earnings are not reported. The Division explained that taxi driving earnings had not been included in the Division's new divided custody calculations because the Division had not been aware of Mr. C's employment as a taxi driver.

At the hearing, Ms. C explained that she has one child and Mr. C has custody of only two of the minor children. The parents have no plans to change this arrangement. Ms. C testified that there is no court order in effect regarding the custody of their children. The Division agreed to prepare new calculations based this updated income information with Ms. C and Mr. C exercising divided custody of the children with D living with Ms. C and W and O living with Mr. C.<sup>7</sup>

After the hearing, the Division filed the latest calculations of Ms. C's monthly child support using a divided custody calculation. The Division estimated Mr. C's income using statistical earnings data for taxi drivers in Alaska.<sup>8</sup>

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at Exhibit 10 uses the best available estimates of the parents' current income and their custody arrangement for the three minor children covered by this order.

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<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Recording of Hearing.

<sup>8</sup> Exhibit 10.

<sup>9</sup> Exhibit 10 & Recording of Hearing.

### **III. Discussion**

Ms. C requested a formal hearing because she wanted to make sure that her modified ongoing child support obligation is set based on a divided custody calculation because D is living with her. Ms. C also was concerned about the Division's giving her credit for her costs of providing medical insurance coverage for the children.

At the hearing the Division agreed that modified ongoing child support should be based on a divided custody calculation using updated estimated earnings for Mr. C. As discussed at the hearing, Ms. C needs to work with her Division caseworker to ensure that she receives the proper credit for providing health care coverage for the children.

The Division's latest calculations use the formula applied when custody of the children is divided between the parents. Divided custody exists when parents each have primary custody of different children rather than sharing custody of the same child or children.<sup>10</sup> In this case the parents exercise divided custody. One child lives full-time with one parent and the other two live with the other parent.

The commentary to Civil Rule 90.3 explains that setting child support for divided custody situations is a two step process. First, support must be calculated using the formula found in Civil Rule 90.3(b)(6), as the Division did in its post hearing submission to record. This formula offsets the amounts each parent would pay the other for the children in the other parent's custody.<sup>11</sup>

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1)(A). Divided custody should be treated as an unusual circumstance under which support will be varied if such a variation is "just and proper."<sup>12</sup> The Division's latest child support calculations are based on both the parents' estimated incomes are correct and result in monthly amounts that are just and proper and should be used in this case to set ongoing modified child support.

The Division's latest calculations use income for Mr. C that has been estimated rather than imputed. Income is imputed, that is, set at a level that is different than what a parent is actually earning, when the parent makes it impossible to accurately estimate his or her income or

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<sup>10</sup> Alaska Civil Rule 90.3, Commentary V.D.

<sup>11</sup> Alaska Civil Rule 90.3, Commentary V.D.

<sup>12</sup> Alaska Civil Rule 90.3, Commentary V.D.

is unreasonably underemployed. Reported earnings for Mr. C 2013 were only \$11,944.7. This low level of earnings is inconsistent with the housing that Ms. C reported that Mr. C is living in. Mr. C did not file his income as ordered by the Division. There is nothing in the record that indicates that Mr. C is disabled. Mr. C's limited reported earnings also support Ms. C's testimony that Mr. C is working as a taxi driver.

The evidence indicates that Mr. C would be unreasonably voluntarily underemployed if he is not working full-time. There is no evidence that Mr. C is unable to work. His reported employment history shows that he is capable of at least part-time employment. Income can be imputed to an obligor in cases of unreasonable voluntary underemployment.<sup>13</sup> The Alaska Supreme Court has recognized that a parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.<sup>14</sup> On the other hand, a parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.<sup>15</sup>

In this case it is not necessary to impute income to because the evidence indicates that Mr. C is working full-time as a taxi driver and it is possible to estimate his income. Because taxi driving earnings are not reported it is not clear if these part-time earnings are in addition to or instead of full-time taxi driving work, but the evidence in the record shows that Mr. C is capable of earning an income that is at least equal to the amount that the Division used in its latest calculation and, if he is not earning this much, he is probably voluntarily underemployed.<sup>16</sup>

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>17</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.<sup>18</sup> A monthly child support amount of \$433.75 would be more than a 15 percent change from the current order of \$376 per month. The change in custody from primary custody of all three minor children with Mr. C to divided custody is also a material change of circumstances that would justify a modification.

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<sup>13</sup> Alaska Civil Rule 90.3(a)(4).

<sup>14</sup> See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

<sup>15</sup> *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

<sup>16</sup> Recording of Hearing.

<sup>17</sup> Alaska Civil Rule 90.3(h)(1).

<sup>18</sup> Alaska Civil Rule 90.3, Commentary X.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification would be effective July 1, 2014, because the petition was issued in June of 2014.

#### **IV. Conclusion**

Ms. C's modified ongoing child support should be set at \$433.75 per month for divided custody, where she has custody of one of these three children. This child support amount was calculated using the divided custody formula in Civil Rule 90.3(b)(6).

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

1. Ms. C's ongoing child support for W, O, and D is set at the monthly amount of \$433.75, based on divided custody, effective July 1, 2014.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for W, O, and D.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on July 17, 2014 remain in effect.

DATED this 7<sup>th</sup> day of November, 2014.

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 17<sup>th</sup> day of December, 2014

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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