

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

In the Matter of)	
)	
C E)	OAH No. 15-0007-CSS
_____)	Agency No. 001196226

DECISION AND ORDER

I. Introduction

Mr. E appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 18, 2014. The obligee child is M, 1½ years old. The custodial parent is B A. F.

The hearing was held on February 2, 2015. Mr. E appeared by telephone; Ms. F did not want to participate in the hearing. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. E’s child support for M is set at \$728 from November 2013 to the present, and ongoing. Mr. E voluntarily left a full-time position in the oil industry in order to become a freelance artist. Mr. E is voluntarily and unreasonably unemployed.

II. Facts

Mr. E and Ms. F are the parents of M, who is currently 1½ years of age. M lives with his mother. The parties have a good working relationship regarding M.

Mr. E was unemployed at the time of the hearing.¹ He has a criminal history and testified that when he was released from jail in December 2011, he had a difficult time finding work. He went to No Name A, where he did snow removal for his uncle, who is a business owner there. Mr. E also worked for the City of No Name A, both in its Facility Z and on its snow removal crew. He eventually began working for Facility Y at the end of 2012. He started out doing snow removal, then became a member of the laborer’s union and was put on a regular, full-time crew. The obligor’s work for his uncle and the City of No Name A paid him \$27,236.37 in 2012.² His income doubled after starting at Facility Y – in just over three quarters in 2013, he earned \$54,453.41.³

Mr. E has two older children with his ex-wife, with whom Mr. E previously had shared custody. At the end of 2013, unspecified difficulties Mr. E had with her and/or the children had

¹ The facts are taken from Mr. E’s hearing testimony, unless otherwise cited.
² Exh. 7.
³ *Id.*

caused her to move out of state and take the children without permission. When that happened, Mr. E stopped paying child support for those children. Of even more consequence, at least for this matter, is that Mr. E chose that time to quit his job at Facility Y in order to concentrate on his career as an artist. He had been commissioned to paint a portrait for the Facility X, and he believes that with a sufficient amount of exposure, he could earn as much, or more, as he was being paid at Facility Y. M was born the next month, in November 2013.

When he left No Name A, the obligor moved to No Name B, where his family lives. At the time of the hearing, he was living at and being the caretaker for a property in the No Name C north of No Name D. He only had to pay the utilities. Mr. E was very confident he had secured a future position with the Facility W, as soon as one came open. In the meantime, he was doing odd jobs under the table.

Mr. E was given additional time after the hearing to submit a letter from his parole officer, whom Mr. E described as being supportive of his decision to concentrate on his art career. However, neither the OAH nor CSSD received any additional evidence from the obligor.

III. Discussion

As the person who filed the appeal, Mr. E has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.⁴

A parent is obligated both by statute and at common law to support his or her children.⁵ In cases established by CSSD, the agency collects support from the date the custodial parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.⁶ In this case, Ms. F applied for child support services in November 2013, so that is the month during which Mr. E's obligation to support M through CSSD should begin.

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. Mr. E is unemployed, so he does not have an income from which to calculate a child support figure. Because Mr. E left his job at Facility Y to pursue his career as an artist, CSSD's Amended Administrative Child Support and Medical Support Order made a specific finding that Mr. E is voluntarily and unreasonably unemployed.

⁴ 15 AAC 05.030(h).

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁶ 15 AAC 125.105(a)(1)-(2).

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."⁷

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."⁸ It is also necessary 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, or of "purely personal choices."⁹ 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.¹⁰ 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."¹¹

After careful consideration, this decision finds that Mr. E is voluntarily and unreasonably unemployed. Mr. E admitted he voluntarily left his employment at Facility Y when his ex-wife and prior children left the state in October 2013. He also admitted that he left the job in order to concentrate on his career as an artist. This is classic voluntary unemployment. Given the circumstances, it is also unreasonable. Prior to leaving Facility Y, Mr. E was earning roughly \$18,000 *per quarter* from the company. At the time of the hearing, he was working under the table doing such things as cutting wood. As a result, M has had to go without the support Mr. E could have provided had he stayed at Facility Y. An obligor parent is free to change jobs and careers, and even to be unemployed for a time, but his or her children should not have to finance a continued interruption in the obligor parent's income.¹² Alaska law is clear that a parent has a duty to support his or her children, and this duty takes priority over lifestyle decisions such as choosing not to seek employment.¹³ Mr. E's lack of reportable income should not be transferred to M as a loss of support.

⁷ Civil Rule 90.3(a)(4).

⁸ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

⁹ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁰ *Kowalski*, 806 P.2d at 1371.

¹¹ Civil Rule 90.3, Commentary III.C.

¹² *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002).

¹³ *See Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

Because Mr. E has been found to be voluntarily and unreasonably unemployed, his child support amount may be calculated from his “potential income,” which is based on his “work history, qualifications and job opportunities.”¹⁴ A primary goal of imputing income, according to the Alaska Supreme Court, is to compel the parent to find full-time employment:

An important reason -- if not the chief reason -- for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to continued inaction. Indeed, in primary and shared custody situations alike, an order imputing income often yields no tangible benefits to the children unless and until it impels the underemployed parent to find a job.^{15]}

CSSD obtained Mr. E’s income information from the Alaska Department of Labor and Workforce Development (DOL). Based on the income of \$54,453.41 reported by the DOL for 2013, CSSD calculated his child support at \$728 per month.¹⁶ CSSD also calculated an amount for 2014 based on an estimation of what he would earn that year from Facility Y, but the 2013 figure should be used instead, as it is an actual income amount. Mr. E’s child support calculation for M is now correctly set at \$728 per month, effective November 2013 and ongoing.

IV. Conclusion

Mr. E has not met his burden of proving that the Amended Administrative Child Support and Medical Support Order dated December 18, 2014 was incorrect. Because he has been found to be voluntarily and unreasonably unemployed, income should be imputed to him in the amount represented by the income he earned in 2013, the year he left employment. That income figure yields a child support amount of \$728 per month for one child from November 2013 to the present, and ongoing.

V. Child Support Order

- Mr. E’s child support for M is set at \$728 per month from November 2013 to the present, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated December 18, 2014 remain in full force and effect.

Dated: June 3, 2015

Signed

Kay L. Howard
Administrative Law Judge

¹⁴ Civil Rule 90.3(a)(4).

¹⁵ *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001).

¹⁶ Exh. 5 at pg. 9.

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 within 30 days after the date of this decision.

DATED this 18th day of June, 2015.

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

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