

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

| | | |
|------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| W. J. |) | OAH No. 15-0029-CSS |
| _____ |) | Agency No. 001197514 |

DECISION

I. Introduction

This decision establishes W J's child support obligation from February 2014 for his three children: D (age 7), E (age 5), and F (age 4). The custodian of record is L. K. Because Mr. J had virtually no income reported in prior years, the Child Support Services Division (CSSD) imputed income to him using the minimum wage. As a result, CSSD issued an Administrative Child Support and Medical Support Order dated September 22, 2014 establishing arrears in the amount of \$3,672 for the period from February 1, 2014 through September 30, 2014, and effective October 1, 2014 and ongoing, a monthly support obligation for three children in the amount of \$459. Mr. J appealed and a hearing was held on March 9, 2015 and on April 15, 2015. Mr. J established by a preponderance of the evidence that CSSD's support obligation is incorrect. It should be \$625 per month for three children effective February 2014.

II. Facts

Mr. J lives in No Name, Alaska. He has three children with Ms. K. Paternity was established by genetic testing. In February 2014, Ms. K applied for services from CSSD. CSSD, after searching the Alaska Department of Labor reported earnings database for Mr. J found only three quarters of reported earnings: two in 2008 for a total of \$267 and one in 2014 for \$360.¹ Because of his unemployment CSSD considered whether Mr. J lived in a depressed economy. He does not.²

¹ Exh. 7.
² Exh. 9.

Mr. J provided no income, so CSSD imputed income for purposes of child support using full time employment earning the minimum wage. After allowable deductions CSSD determined his support obligation for three children to be \$459 effective February 2014.³

Mr. J appealed contending that his income was overstated because he does not work and relies upon his wife's income. At the March 9, 2015, hearing Mr. J was questioned regarding his household income and expenses. He testified that he did not know what his wife made or what the monthly expenses were beyond rent, \$180 per month. He emphasized that was looking for employment. He found employment later that month at the No Name Company earning \$16 per hour and working 30 hours a week.⁴

The rules governing child support provide that where a parent does not work because of the income of his or her spouse, income may be attributed to the parent.⁵ Mr. J was ordered to provide additional information regarding his wife's income but he did not submit all documents as ordered.⁶ He provided a Formal Hearings Expense Checklist indicating that his wife was employed earning \$20 per hour and listing their monthly household expenses of \$2,000.⁷

A follow up hearing was held April 15, 2015. Mr. J participated but Ms. K did not. Using Mr. J's actual current employment information CSSD submitted a revised child support calculation.⁸ The revised amount after standard deductions revealed a child support amount of \$625 per month for three children.⁹ Mr. J testified that unless varied the support amount would cause a hardship because he would not be able to afford food and other necessities.

III. Discussion

There are no procedural disputes. Therefore, this decision will focus on the legal issues presented: The amount of support owing under Alaska Rule Civil Procedure 90.3(a) and whether Mr. J should receive a variance from that amount.

³ Exh. 2.

⁴ Exh. 10.

⁵ Alaska Rule Civil Procedure 90.3(c)(1); Commentary Alaska Rule civil Procedure VLB(5).

⁶ See March 18, 2014 Order.

⁷ Submitted April 1, 2015.

⁸ Exh. 11.

⁹ Exh. 11.

Mr. J filed this appeal and requested a formal hearing. As the person who requested the hearing, he has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.¹⁰

A. *Child Support Calculated Pursuant To 90.3(a)*

Child support is calculated as a percentage of the obligor parent's income from all sources.¹¹ When a child support order is established, the division first determines the amount of pre-ordered arrears, that is, the amount owed from the date the proceeding was initiated until a final administrative order is issued. Typically arrears are calculated using actual earnings. Here, other than \$360 in the second quarter of 2014 there are no reported earnings. Mr. J was effectively unemployed, so he does not have an income from which to calculate a child support figure. CSSD imputed income to Mr. J at the minimum wage. The fact that CSSD imputed income raises the issue of whether Mr. J is voluntarily and unreasonably unemployed.

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."¹² 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."¹³ 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.¹⁴ 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."¹⁵

Because No Name is not a depressed economy, Mr. J's unemployment is not the result of economic factors but rather a purely personal choice. He may believe that because he hunted and fished rather than worked, his hunting and fishing should have an economic value. This may be a plausible argument if he was providing food for the three obligee children, but he was not.¹⁶

¹⁰ 15 AAC 05.030(h).

¹¹ Alaska Rule Civil Procedure 90.3(a)(2).

¹² *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

¹³ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁴ *Kowalski*, 806 P.2d at 1371.

¹⁵ Civil Rule 90.3, Commentary III.C.

¹⁶ J Testimony.

His obligation is to support his children and it was unreasonable to think he could do so through subsistence. There is sufficient evidence in the record to prove that his unemployment is not reasonable.

Imputed income is based on the parent's work history, qualifications and job opportunities.¹⁷ Mr. J was able to find employment at \$16 per hour 30 hours per week. This is the best indicator of what a person of his age, work history, and qualifications in his community could have earned had he not been unemployed; it is the amount that will be used for calculating support, both arrears and ongoing. As calculated by CSSD, this amount results in a support obligation of \$625 per month for three children.¹⁸ Because anticipated future income and income for purposes of calculating arrears are the same, Mr. J's child support obligation for three children should be \$625 per month effective February 2014 and ongoing.

B. *Variance*

Mr. J contends that the amount of support ordered is manifestly unjust and therefore must be varied. Manifest injustice will be found if a reasonable person would be convinced that the award is either unjustly large or unjustly small after careful evaluation.¹⁹ Mr. J did not want to share details about his personal life, which is understandable, but it is that kind of information that assists the administrative law judge in determining whether to reduce a parent's child support obligation.

From what little he did share it is known that he lives with his wife and another child. Their total household expenses are approximately \$2,000. Prior to March 2015, his wife paid all expenses. Mr. J testified that he did not know what his wife made or what the household expenses were. At the last minute he provided information regarding his wife's earnings. She earns \$20 per hour and works 30 hours per week. When placed into CSSD's online calculator this results in his wife having an adjusted annual income of \$27,517, or \$2,293 per month.²⁰ Her adjusted income alone exceeds the monthly household expenses.

Mr. J's adjusted annual income is \$22,736 per year, or \$1,894 per month. The only expense he has is child support. After he pays child support, Mr. J's has \$1,269 remaining. With his wife's income included, after all expenses including child support the household has

¹⁷ Civil Rule 90.3, Commentary III.C. 15 AAC 125.020(b).

¹⁸ Exh. 11.

¹⁹ 15 AAC 125.080.

²⁰ Attachment A.

\$1,500 per month available for food and other items. With or without Mr. J's wife's income, a reasonable person would not find the amount of support ordered to be manifestly unjust.

An obligor's burden of proof by "clear and convincing evidence" is a high standard. Mr. J has options available to provide for his current family while also providing support for D, E, and F. Based on the evidence in its entirety, Mr. J did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3(a) D, E, and F were not reduced. Therefore, his request for a variance based on a financial hardship should be denied.

C. Allegations that Children Were Living With Grandmother

Finally, Mr. J argued that the children were not living with Ms. K. Where the children live may change who receives the support but not the amount of support owed.

IV. Conclusion

Mr. J established by a preponderance of the evidence that CSSD's September 22, 2014 order was incorrect. Mr. J was voluntarily and unreasonably unemployed from February 2014 up through March 2015. Using the income imputed to him, Mr. J's child support calculated pursuant to Civil Rule 90.3(a) is \$625 per month for three children. He failed to establish by clear and convincing evidence that unless varied, the child support amount would be manifestly unjust. Mr. J's monthly child support obligation for D, E, and F is \$625 per month, effective February 2014 and ongoing.

V. Child Support Order

- Mr. J's child support obligation for D, E, and F is set at \$625 per month effective February 2014 and ongoing;
- All other provision of the Modified Administrative Child Support and Medical Support Order dated September 22, 2014 remain in full force and effect.

Dated: April 28, 2015

Signed

Rebecca L. Pauli
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 13th day of May, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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