

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

C [REDACTED] G. M. [REDACTED] )

Plaintiff, )

v. )

G [REDACTED] L. D. [REDACTED], )

Defendant. )

Case No. 3AN-15-[REDACTED] CI

C [REDACTED] G. M. [REDACTED], )

Appellant, )

v. )

STATE OF ALASKA, )  
DEPARTMENT OF REVENUE, )  
CHILD SUPPORT SERVICES DIVISION, )

Appellee. )

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trial in this matter was held on January 5<sup>th</sup> and 6<sup>th</sup> and February 10<sup>th</sup>, 2017. In addition to the testimony and exhibits admitted at trial, the Court has had the entire administrative record regarding the pleadings before the Child Support Services Division (CSSD) including the appeal. The Court makes the following Findings.

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[No Name, LLC]

6. Mr. D [REDACTED] was employed by [REDACTED] from 2012 until August 2014. It is now undisputed that Mr. D [REDACTED]'s income exceeded the income cap during the calendar year 2013 and 2014.

[No Name, LLC]

7. Although Mr. D [REDACTED] was provided W-2s from [REDACTED] for the tax years 2012 and 2013 (Exhibits 33 and 29 respectively), his income was not reported to the State Department of Labor as required by law. For both of those years, the W-2s showed an inaccurate social security number for Mr. D [REDACTED].

8. Mr. D [REDACTED] was employed as a practice manager for [REDACTED] [No Name, LLC]. He worked closely with other employees who reported his income to CSSD.

9. Although requested earlier from Mr. D [REDACTED] as previously discussed, the records showed that the first report of income from [REDACTED] [No Name, LLC] to the Child Support Services Division was dated March 6<sup>th</sup>, 2014 and completed by D [REDACTED] T [REDACTED], Executive Assistant at [REDACTED] [No Name, LLC].

10. This was in response to a direct request from the Child Support Services Division dated February 26<sup>th</sup>, 2014.

11. Mr. D [REDACTED] and A [REDACTED] M [REDACTED], then Director of Finance for [REDACTED] [No Name, LLC], were romantically involved and currently reside together.

(Exhibit 12). The Child Support Services Division's Request for Employment Information and History, completed on March 6, 2014 disclosed that Mr. D [REDACTED] was employed from October 1<sup>st</sup>, 2012 through the present at an hourly rate of \$60.85 and had a bi-weekly gross income of \$4,868. Ms. T [REDACTED] chose to report Mr. D [REDACTED]'s income on a bi-weekly basis instead of annual and did not report his bonuses, which were substantial.

12. According to a letter dated January 30<sup>th</sup>, 2014 to Mr. D [REDACTED]'s attorney, Mr. Justin Eschbacher, Ms. T [REDACTED] reported that Mr. D [REDACTED]'s income expectation for 2014 is a base salary of \$125,000 with an average monthly bonus of \$4,208 or about \$14,500 on a monthly basis. This amount was similar to a Financial Declaration Mr. D [REDACTED] filed in a separate lawsuit, Trial Exhibit number 3, which also disclosed Mr. D [REDACTED]'s needing disability pay. That amounted to almost ~~\$18,000~~ <sup>\$130,000</sup> gross per year.

13. The court misspoke about previously referring to Exhibit 12 as being the earliest reported income to CSSD. It appears in October 2013, [No Name, LLC] [REDACTED] had reported a similar income with an hourly wage of \$60.85, paid bi-weekly, to the state of Montana Child Support Services Division as reflected in Exhibit 25 page 19. This was also reported by D [REDACTED] T [REDACTED].

14. On March 31<sup>st</sup>, 2014, Mr. D [REDACTED] faxed computer-generated paystubs for the dates of February 7, 2014, February 21, 2014, what appears to be March 7, 2014 although a portion has been redacted, and March 21, 2014. Missing from these computer-generated paystubs was information reported on his actual paystubs, trial Exhibit number 4, which showed year-to-date totals.
15. The stubs faxed to CSSD on March 31, 2014 by Mr. D [REDACTED] did not display this information (Trial Exhibit 10). Mr. D [REDACTED] testified that this information was requested by CSSD after meeting with him.
16. The court finds that as a direct result of the misinformation provide  
[No Name, LLC]  
by Mr. D [REDACTED] and [REDACTED] CSSD entered an administrative Child Support and Medical Support Order dated April 2, 2014 in the monthly amount of \$743 (Trial exhibit 23, page 4). This calculation did not include income from Mr. D [REDACTED]'s VA. (Trial Exhibit 23 at page 10.)
17. While still representing herself, Ms. M [REDACTED] filed a Request for Administrative Review Hearing on April 25, 2014. This very narrow request is marked as Exhibit 2, date stamped page 000060 through 000097 in the Record on Appeal before this court.
18. Ms. M [REDACTED]'s Request for Review was generated in great part by the vast differences in income reported to CSSD by Mr. D [REDACTED] and

[No Name, LLC]

other employees of [REDACTED] in this case, compared to the income reported in 3AN-14-[REDACTED] CI, a divorce and custody case that Mr. D [REDACTED] was simultaneously litigating.

19. Prior to the informal hearing on the request to review, Ms. M [REDACTED] hired Mr. Pradell who has represented her ever since, both in the administrative proceeding and in the proceeding before this court.
20. An informal hearing was held in July 2014 at CSSD. In response to this hearing, K [REDACTED] R [REDACTED], of [REDACTED] [No Name, LLC], the CEO conveyed Trial Exhibit 8, which was for the first time, an accurate report of all income to Mr. D [REDACTED] from [REDACTED] [No Name, LLC] from May 1, 2013 through June 30, 2014. CSSD issued another administrative review hearing Decision as of July 30, 2014, which was subsequently appealed and remanded back to CSSD and, after an interminable amount of time, ultimately resulted in Administrative Law Judge (ALJ) Andrew Lebo's June 11, 2016 Decision and Order, which was subsequently appealed to this court.
21. The Court should note that Ms. M [REDACTED] filed the Complaint in 3AN-15-[REDACTED] CI for child support on April 3, 2015 and attempted to remove the proceedings before CSSD, but this court held that CSSD was deep into the process of establishing support and stayed the civil proceeding pending the administrative review. Given the extreme

length of time that CSSD took to accomplish this task, in hindsight, the court <sup>regrets</sup> ~~redacted~~ that Decision, nevertheless, all of the facts and circumstances are before the court presently.

22. Ultimately, ALJ Lebo found that Mr. D [REDACTED]'s past support obligation for 2013 and 2014 was \$2,000 per month beginning August 2013, that his the past child support amount for 2015 was \$698 per month, and that his ongoing Child Support obligation beginning January 1, 2016 is \$934 per month. (The Appellate Record at bate stamped 001528.)
23. This Decision relied upon the final submission to record by CSSD. (Bate Stamped 001444 through 001445 incorporating exhibit 17, bate stamped 001446 through 001452 of the Appellate record.)
24. The Court finds that the calculations in Exhibit 17 attached to the ALJ Decision are accurate but that does not dispose of the issue however, as both parties have issues with the final Decision of the ALJ.
25. Mr. D [REDACTED] claims some continuing support should be deducted for his older children, who are no longer minors or attending high school. The court rejects this contention and finds that the deductions from income set forth in Exhibit 17 for support of other children are accurate.

26. Ms. M [REDACTED] requested this court to impute income to the cap and beyond for Mr. D [REDACTED]'s voluntary and unreasonable under-employment.

27. Mr. D [REDACTED] was terminated from his employment at [REDACTED] [No Name, LLC] [REDACTED] within weeks of Mr. R [REDACTED] finally sending CSSD an accurate reflection of Mr. D [REDACTED]'s income at [REDACTED] [No Name, LLC] [REDACTED] in late July 2014 (Trial Exhibit 8). There is no evidence before the court that Mr. D [REDACTED]'s termination was voluntary. By January 2015, Mr. D [REDACTED] secured a position with [REDACTED] [No Name Clinic] [REDACTED] again as a practice manager, but for significantly less income, a position that he held for three months until the end of his probationary period. Once again, his termination was not voluntary and there was evidence before the court supporting Mr. D [REDACTED]'s position that he has been "blackballed" in the Anchorage <sup>medical</sup> ~~medial~~ community and supporting Mr. D [REDACTED]'s termination was due to poor job performance and perhaps even improper conduct.

28. As will be discussed subsequently, Mr. D [REDACTED] had filed a whistleblower lawsuit against [REDACTED] [No Name, LLC] [REDACTED] claiming a multitude of improper activities occurring when he worked there. The lawsuit is still unresolved but Mr. D [REDACTED] claims he is

persona non grata in the Anchorage medical community as a result of the filing. Mr. D [REDACTED] is currently working as a practice manager at a veterinary clinic with yet another income reduction to his current income of \$54,000 annually.

29. The court agrees with Ms. M [REDACTED] that Mr. D [REDACTED] is currently under-employed based upon his past employment at [REDACTED] [No Name, LLC] [REDACTED] [No Name Clinic] [REDACTED] and [REDACTED].

The court also agrees with Ms. M [REDACTED] that Mr. D [REDACTED]'s assertions should be viewed with some caution because of Mr. D [REDACTED]'s involvement in the underreporting of his income on multiple [REDACTED] [No Name, LLC] occasions from [REDACTED] and himself.

30. Mr. D [REDACTED] represented himself before this court. He is both intelligent and clever and this court does not buy that it was merely a mistake that his income was severely underreported or in the case of his VA benefits not reported at all to CSSD when during this very same period his income was more accurately reported to the superior court in simultaneous litigation.

31. Nevertheless, that does not mean that Mr. D [REDACTED] is currently voluntarily and unreasonably employed. Quite frankly, Mr. D [REDACTED] may have been overemployed at his position with [REDACTED] [No Name, LLC] [REDACTED]. Due in no small part to his filing of the



whistleblower lawsuit, this court does not find it at all unusual that Mr. D [REDACTED] would have difficulty in finding a similar position in a medical clinic in Anchorage Alaska with or without a <sup>pre (am)</sup> less blackballing comments by his former employer. Even if improper conduct during employment was considered to be evidence in support of voluntary and unreasonable resulting unemployment, there is insufficient evidence before the court, hearsay aside, of such egregious behavior that would make it equitably necessary for this court to impute income to Mr. D [REDACTED].

32. There simply is no motivation for Mr. D [REDACTED] to pay 20% of a lesser amount of income for S [REDACTED]'s support and forgoing the other 80% of increased wages. He is employed full time at a decent paying job and he is able to enjoy physical time with his other child. He has attempted to secure better paying employment within the medical community without success.

33. While his acceptance of the position, managing a veterinarian practice, may be a fall from grace, the court does not find sufficient evidence that this fall was voluntary or that he is currently unreasonably employed. While it is clear that a practice manager could receive an average pay of double what Mr. D [REDACTED] is currently making, the court finds it unlikely, that those positions will be

available to Mr. D [REDACTED] given his past history. The court does not find that Mr. D [REDACTED]'s decrease in income is only temporary.

34. Child support is modifiable should Mr. D [REDACTED]'s financial circumstances change. The court does not find from the totality of the circumstances that Mr. D [REDACTED] is voluntarily unreasonably underemployed. Since the court does not find that income should be imputed additionally to Mr. D [REDACTED]'s current income or past income as found ultimately by CSSD, the court will also not find that income should be imputed above the \$120,000 income cap as requested by Ms. M [REDACTED].

35. S [REDACTED] was born in May of 2013. By regulation, CSSD was unable to begin child support until August of 2013. At trial the parties stipulated that child support will begin June 1<sup>st</sup>, 2013, as this court clearly has the authority to commence child support at the time of S [REDACTED]'s birth.

36. Ms. M [REDACTED] also requested this court to refer this matter to the Office of Special Prosecutions and Appeals for prosecuting of the discrepancies found here within. Ms. M [REDACTED] points to no authority requiring the Court to do so. In the past, this Court has sparingly referred matters to the District Attorney's office, where clear violations of criminal statutes appear to be both provable beyond a

reasonable doubt and prosecutable. This Court will not be referring this matter to the Alaska Department of Law.

37. Finally, Ms. M [REDACTED] requested the court to award significant attorney's fees incurred in both the civil action and the administrative process. This matter only concerns child support. The divorce exception to Civil Rule 82 does not apply. The court will consider the request for attorney's fees made in a motion to be filed with in 20 days from the distribution date of this Decision.
38. The court notes that the underreporting of Mr. D [REDACTED]'s income and the subsequent litigation resulted in an increase of child support exceeding \$25,000 for the first 19 months alone. The court further notes that the underreporting of Mr. D [REDACTED]'s income during the end of 2013 and beginning of 2014 played a significant role in incurring some of the attorney's fees during both the civil litigation and administrative review. Finally, the court notes that Mr. D [REDACTED]'s reluctance to provide timely discovery before this court caused additional attorney's fees. The parties will be able to fully litigate these and other issues in the upcoming motion for attorney's fees requested by this Court.
39. Finally, the court is unclear as to whether Mr. D [REDACTED] and Ms. M [REDACTED] still have an issue unresolved by CSSD regarding child

support credits or debits. The court would request an additional section in any Motion for Attorney's Fees regarding this specific issue, if it remains unresolved.

DATED this 5th day of April, 2017.


By:   
Patrick McKay  
Superior Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be mailed on this 10 day of March, 2017, to:

G  L. D. 

Nelleene A. Boothby  
Office of the Attorney General  
1031 W. 4th Ave., Suite 200  
Anchorage, AK 99501



I certify that on 4/6/17 a copy sent of the following was mailed/faxed/hand-delivered to each of the following at their addresses of record. Steven Pradell  
G   / AAG Nelleene Boothby  
Administrative Assistant 

MAR 10 2017