

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

In the Matter of)	
)	
K D. S)	OAH No. 16-0584-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001103942

DECISION AND ORDER

I. Introduction

K S requested a reduction of his child support obligation while he is unemployed and completing a voluntary long-term residential treatment program for his alcohol dependency. The Child Support Services Division (CSSD) granted Mr. S’s request, and it adjusted his ongoing obligation to \$50 per month. Custodial parent Z C appealed and argued that Mr. S is voluntarily and unreasonably unemployed. Therefore, his support amount should remain \$1,153 per month, as provided in the prior support order.

Mr. S is not unreasonably unemployed during the time in which he is in residential treatment. Therefore, CSSD properly modified his support obligation based on his current lack of income. However, upon Mr. S’s departure from residential treatment, he can be expected to earn wage income once again and another modification review would be appropriate.

II. Facts

A. Material Facts¹

Mr. S is approximately 39 years old.² He and Ms. C are the parents of one son, U, 16. U lives with Ms. C, who has primary physical custody.

Mr. S’s child support obligation for U was last reviewed in 2008. At that time, Mr. S worked as a service technician on the North Slope. He earned annual wages of \$92,958.90.³ His job involved supervisory work doing field inspections and work on well heads and valves. As part of the job, Mr. S was certified to work in a number of specialties, including x-ray radiography. He also had certifications in other areas, such as auto body paint and welding.

Sometime after his 2008 child support modification, Mr. S quit his job. He worked at another job for a period of time, but then left that job as well. He made regular and significant child support payments through October 2010.⁴ He made regular, but minimal, payments from January 2011 through May 2012, which suggests he was employed at a lesser income during this

¹ Unless noted otherwise, the material facts are based on the testimonies of K S and Z C.
² Exhibit 13, p. 4.
³ Exhibit 11, p. 6.
⁴ Exhibit 12, p. 10-12.

period.⁵ He has not held a steady job since then, nor has he made significant child support payments.⁶ As a result, his arrears balance totals more than \$111,000.⁷

Mr. S asserted that he could not return to oilfield work, and he could not maintain regular employment at other jobs, because of his alcohol dependency. He provided vague information about his efforts to find work after 2010, as well as the reasons for his lack of success. It appears he held at least three short-term jobs. For two summers, he worked at a fish processing plant in Village A. He held a janitorial position for an undisclosed employer for a period of time. He also had a job as a school bus driver. However, he lost that job when he lost his driver's license because of a conviction for driving under the influence of drugs or alcohol (DUI). He does not currently have a valid driver's license, though he could reinstate his license if he would pay the fines to do so. His fees and fines total roughly \$3000.

After he quit his North Slope job, Mr. S declined to pursue a number of subsequent employment opportunities in that field. This may have been due in part to Mr. S's addiction problems, although that is not clear from the evidence in the record. Mr. S also stated that he could not return to his former work because of problems with his back, right shoulder and left knee.⁸ However, he did not submit any evidence to support his claims of physical impairment, and it appears that he does not have medical records that would substantiate them. He also contended that could not obtain work like his former job, because he cannot afford to reinstate his driver's license. In light of Mr. S's significant earning potential, however, this reasoning is neither persuasive nor credible.

Mr. S has not earned significant reported income in recent years. According to a database maintained by the Alaska Department of Labor, he earned wages of \$7,994.03 during two quarters of 2013 and \$11,284 during two quarters of 2015.⁹ He also received unemployment insurance benefits of \$5,668 in 2013, \$1,764 in 2014, and \$2,016 in 2015.¹⁰ Ms. C alleged that Mr. S has gotten by in recent years by working "under the table" for cash.

In 2015, Mr. S was charged with criminal nonsupport of his child. He pled guilty to the misdemeanor of criminal nonsupport under Alaska Statute 11.51.120(c) in September 2015.¹¹

⁵ *Id.*, pp. 7-10.

⁶ *Id.*, pp. 1-7.

⁷ *Id.*, p. 1.

⁸ Exhibit 13, p. 2.

⁹ Exhibit 9.

¹⁰ *Id.*

¹¹ Exhibit 14 (Judgment and Order Providing for Misdemeanor Probation, Case No. 3 AN-15-00000 CR, dated 9/17/15).

The plea reflects Mr. S's acknowledgment that he knowingly failed, without lawful excuse, to provide support for U.¹²

Mr. S's alcohol problem has existed since at least 2008. He did not provide evidence of his prior efforts to address his dependency. However, on March 8, 2016, he voluntarily checked himself into a long-term residential treatment program.¹³ He continued to reside at the treatment center as of the June 2016 hearing in this matter. According to his counselor at the center, Mr. S's diagnosis is described as "Alcohol Use Disorder Severe."¹⁴ His tentative program completion date is February 15, 2017.¹⁵

Mr. S does not currently earn any income, and he cannot be employed while he undergoes residential treatment.¹⁶ As a result, he is not expected to have any wages or other sources of income during 2016.

B. Procedural Background

In 2008, CSSD set Mr. S's child support obligation at \$1,153 per month, based on his 2007 wages of \$92,958.90, plus his Alaska PFD.¹⁷ In January 2016, Mr. S requested a modification review.¹⁸ CSSD sent the parties notice of Mr. S's request on January 27, 2016, and it requested income information from both parents.¹⁹

In response, Mr. S submitted a letter from A D, his counselor at City A, the long-term residential drug and alcohol treatment program where Mr. S currently resides. Ms. D verified that Mr. S was undergoing residential treatment, which can range from 8 months to two years in duration. During this time, he will not earn income.²⁰ Mr. S did not provide other information regarding his income or financial circumstances.

CSSD granted Mr. S's modification request on April 6, 2016, and it issued a Modified Administrative Child Support and Medical Support Order the same day.²¹ The modified order set his ongoing support obligation at the state minimum of \$50 per month, effective February 1, 2016.²² In calculating this obligation, CSSD assumed that Mr. S's only annual income came from the

¹² AS 11.51.120(a).

¹³ Exhibit 4.

¹⁴ Exhibit 13, p. 3.

¹⁵ *Id.*

¹⁶ *See* Exhibit 4, Exhibit 13, p. 3.

¹⁷ Exhibit 1; Exhibit 11, p.6.

¹⁸ Exhibit 2.

¹⁹ Exhibit 3.

²⁰ Exhibit 4.

²¹ Exhibit 5.

²² Exhibit 5, pp. 3-10. CSSD issued a Corrected Modified Administrative Child and Medical Support Order on April 13, 2016, to correct a typographical error in the April 6th order. Exhibit 6.

Alaska PFD. For reasons that are not clear in the record, CSSD later concluded that Mr. S does not have income from any sources, including the PFD. On June 2, 2016, it issued an Amended Modified Administrative Child Support and Medical Support Order that reflected this determination.²³ The amended order reiterated the \$50 support amount and effective date of February 1, 2016.

Ms. C appealed. She asserted that Mr. S's support obligation should not decrease since he is voluntarily and unreasonably unemployed. Among other claims, she noted that Mr. S "had a good job and quit so that he wouldn't have to pay me child support and to drink daily."²⁴ She alleged that Mr. S informed her when he quit his oilfield job that he would no longer pay child support, and he has devoted himself to fulfilling that promise. From her perspective, Mr. S sought residential treatment as another way to avoid responsibility for his child support obligations. Because he is there voluntarily, he is free to leave at any time. Ms. C predicted that he will do so once his support obligation is reduced. She also asserted that Mr. S has not shown that he requires long-term residential treatment, since he has not yet tried other forms of treatment that would allow him to work while he addresses his dependency.

A formal hearing took place on June 16, 2016. Ms. C and Mr. S appeared by telephone and represented themselves. Child Support Specialist Brandi Estes also appeared telephonically and represented CSSD. The hearing was recorded. The record remained open after the hearing for additional evidence and argument. All offered exhibits were admitted into evidence. The record closed on July 13, 2016.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.²⁵ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. 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.

In child support matters, the person who files an appeal bears the burden of proof.²⁶ Ms. C filed this appeal, so she must prove by a preponderance of the evidence that the April 6, 2016

²³ Exhibit 8.

²⁴ Exhibit 7, p. 1.

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁶ 15 AAC 05.030(h).

Modified Administrative Child Support and Medical Support Order, as amended on June 2, 2016, is incorrect.²⁷

A. Modification standards and effective date.

A child support order may be modified upon a showing of “good cause and material change in circumstances.”²⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that “material change in circumstances” has been established and the order may be modified. Mr. S’s child support was previously set at \$1,153 per month, so a revised calculation that is at least \$172.95 lower would be sufficient to warrant modification in this case.²⁹

When a modification is made, the new monthly support amount becomes effective the month after the parties were served with notice of the petition for a modification review. CSSD provided the parties with notice of Mr. S’s petition on January 27, 2016, so the modification in this case is effective February 1, 2016.

B. Mr. S’s support obligation should be based on his actual income, since he is not unreasonably unemployed while he remains in long-term residential treatment.

Under Civil Rule 90.3, a parent’s ongoing child support obligation should be based on the amount the parent can be expected to earn during the period in which the support will be paid. By its nature, this determination can be a somewhat uncertain endeavor, since the relevant calculation is expected future income.³⁰

Mr. S does not presently earn any income. If he remains in treatment through the rest of the year, as is expected, he will not have any 2016 wage income. It is not clear whether Mr. S is eligible to receive the 2016 PFD. Even if he is, however, his 2016 income is expected to be so low that, based on his actual income, the Civil Rule 90.3 formula still results in a \$50 per month support obligation.

The issue in this case is whether Mr. S’s support obligation should be calculated based on his potential income, because he is voluntarily and unreasonably unemployed. If he is, his child support amount may be determined by the income that a person of his work history, qualifications and job opportunities can be expected to earn.³¹ This is because a parent’s duty to

²⁷ 2 AAC 64.290(e).

²⁸ AS 25.27.190(e).

²⁹ \$1,153 x 15% = \$172.95

³⁰ Civil Rule 90.3, Commentary III.E.

³¹ Civil Rule 90.3(a)(4). It is not appropriate to rely on potential income for a parent who is physically or mentally incapacitated. There is no evidence indicating that Mr. S meets this criteria.

support his or her children takes priority over other debts, obligations and lifestyle decisions.³² Therefore, while a noncustodial parent is free to change jobs and careers, and even to be unemployed for a time, his child and the other parent should not have to finance those decisions.³³

Whether a parent is voluntarily and unreasonably unemployed is a question of fact, and its resolution depends on the nature of the changes and the reasons for the changes.³⁴ Thus, a “totality of the circumstances” approach is appropriate.³⁵

Regarding the “voluntary” prong of the analysis, the question is whether the parent has engaged in voluntary conduct “for the purpose of becoming or remaining unemployed.”³⁶ Mr. S’s unemployment is voluntary, and it has been for some time. Most relevant for purposes of this decision is the fact that Mr. S voluntarily elected to enter long-term residential treatment, which precludes him from employment for the duration of the program.

The next question is whether Mr. S’s choice to be unemployed is also unreasonable. Before he enrolled at City A, Mr. S’s voluntary unemployment or underemployment was not reasonable. Ms. C testified clearly and credibly, and she presented corroborating evidence to show that Mr. S has willfully refused to find gainful employment and to pay child support in the past, without any lawful excuse. In contrast, Mr. S presented extremely vague information about his life and recent work history. He was not forthcoming during the hearing, and he did not adequately explain why he did not or could not earn a more significant income prior to 2016.

For purposes of this decision, however, the critical facts pertain to Mr. S’s reasons for being unemployed in 2016, the period in which any modified support will be paid. The most significant of these facts is that Mr. S was accepted into a long-term residential treatment program, and he is actively pursuing intensive treatment that will continue through the end of the year. The parties agree that Mr. S has struggled with alcohol addiction for an extended period of time. He entered treatment in March, and he had participated in the program for nearly four months through June 2016, which shows a commitment to his treatment. Mr. S established that his diagnosis is severe enough to warrant inpatient treatment, and that his treatment is expected to require approximately 11 months. During this time, he will not be able to work or earn income. Based on this information, Mr. S’s current state of unemployment is not unreasonable. Indeed, if

³² See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

³³ *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002).

³⁴ *Olmstead*, 42 P.3d at 1105; *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

³⁵ Civil Rule 90.3, Commentary III.C.

³⁶ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

successful, his treatment may offer the greatest likelihood of success in returning Mr. S to the workplace, at wages that are appropriate for a person of his experience and technical skills.

Under these circumstances, Mr. S's child support obligation should not be calculated based on imputed income. Therefore, CSSD properly modified his support obligation based on his actual income, which results in an ongoing support amount of \$50 per month. This determination is narrow, however. Although Mr. S is not currently unreasonably unemployed, that will remain true only as long as he needs and remains in long-term residential treatment.

Ms. C asked legitimate questions about whether Mr. S could have achieved his treatment goals while holding a job and earning income. Even if that might have been possible, however, Mr. S showed that his addiction is so severe that he qualifies for an inpatient level of care at a reputable facility. His decision to pursue this treatment is accepted as a reasonable course of action given his history of substance abuse. Ms. C also expressed concern that Mr. S's primary motivation for seeking residential treatment is to reduce his child support amount, and he will leave the program as soon as that happens. Ms. C can best address this concern by requesting another modification review upon Mr. S's departure from treatment, whether that occurs next month or next year.

IV. Conclusion

Ms. C has not met her burden to show that CSSD made an error when it modified Mr. S's child support obligation to \$50 per month, effective February 1, 2016. Based on the totality of the circumstances, Mr. S's voluntary decision to pursue long-term residential treatment for his alcohol dependency is reasonable. That treatment precludes him from employment. Therefore, as long as Mr. S remains unable to earn income because he needs and is in residential treatment, he is not voluntarily and unreasonably unemployed. However, either party may request another modification review upon Mr. S's departure from the treatment program.

CSSD properly calculated Mr. S's support obligation based on his expected actual 2016 income, under Civil Rule 90.3(a)(1), rather than on potential income under Rule 90.3(a)(4). Mr. S is likely to receive little or no income in 2016, so his ongoing support amount was appropriately modified to \$50 per month. No variance under Civil Rule 90.3(c) was requested or granted.

CSSD's April 6, 2016 Modified Administrative Child Support and Medical Support Order, as amended on June 2, 2016, is affirmed.

V. Child Support Order

- The Amended Modified Administrative Child Support and Medical Support Order, dated June 2, 2016, is affirmed and remains in full force and effect.

DATED: August 2, 2016.

By: Signed
Kathryn Swiderski
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 16th day of August, 2016.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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