

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

In the Matter of:	)	
	)	OAH No. 16-1066-CSS
U L. C	)	Agency No. 001213517
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**DECISION AND ORDER**

**I. Introduction**

U L. C appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued on August 8, 2016. That decision affirmed CSSD’s June 14, 2016 Administrative Child Support and Medical Support Order, which established Mr. C’s support obligation for his daughter, S, at \$765 per month, effective July 1, 2016.

Mr. C met his burden to show that his support obligation should not be based on his 2015 income. Because Mr. C is voluntarily and unreasonably unemployed, his child support should be set based on his average income over the last three years. This results in a support amount of \$565 per month, beginning January 2016.

**II. Facts**

*A. Material Facts<sup>1</sup>*

Mr. C and Y K are the parents of S, who is 2. S lives with Ms. K. Mr. C lives in No Name.<sup>2</sup> He is currently unemployed, and he has been unemployed for nearly all of 2016. He is a high school graduate, and he prefers working with his hands rather than with people. He has significant experience and training as a plumber’s apprentice, and he continues to look for employment opportunities in that field. However, he also has skills and abilities that would enable him to perform other kinds of work.

From 2013 through 2015, Mr. C worked as a plumber’s apprentice for several different employers. In 2013, he worked for No Name Services, No Name, and The No Name Group, Inc.<sup>3</sup> According to information reported to the Alaska Department of Labor by his employers, he earned a total of \$22,112.02 that year.<sup>4</sup> In 2014, he worked as a plumber’s apprentice for No

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<sup>1</sup> Unless noted otherwise, the material facts are based on the testimony of U C.

<sup>2</sup> Exhibit 9.

<sup>3</sup> Exhibit 10.

<sup>4</sup> *Id.*

Name, Inc. and No Name, Inc. His 2014 wage income totaled \$29,912.98.<sup>5</sup> From March 2015 to December 2015, Mr. C again worked as a plumber's apprentice for No Name. He earned \$26.93 per hour, working 40 to 50 hours per week.<sup>6</sup> His 2015 wages from No Name totaled \$68,936.99.<sup>7</sup> For reasons not explained in the record, he was terminated from that job in December 2015.

In 2016, Mr. C received unemployment benefits totaling \$8,274 between January and early June 2016. In July 2016, he worked for one week as a plumber's apprentice with the plumber's and pipefitter's union. However, he was fired from that job after he did not show up for work one day. At that time, he was also removed from the plumber's union.

During the hearing, Mr. C was not forthcoming with information explaining his frequent job changes or his job search efforts before and after his one-week job in July 2016. He indicated that he is currently looking for a new job doing non-union plumbing work, since plumbing is what he knows best. According to Mr. C, he has positive references from past jobs, and he has submitted applications to potential employers, but he has not received feedback that a new job doing plumber's apprentice work will soon be available. He identified several potential employers that he still intends to contact for plumbing work. Mr. C has not broadened his job search to look for other kinds of work, because he still desires a plumbing job. He indicated that he sometimes performs limited odd jobs for cash, such as trash removal for neighbors, but he earns negligible income from this work.

Mr. C is married, and he has a one-year-old son. However, he and his wife are seeking a divorce. Because he is unemployed and earning no income, Mr. C has reduced his expenses to a bare minimum. He lives rent-free with his brother, and Mr. C's family members provide food and other necessities. He has a car, but he is behind on payments and expects it to be repossessed soon.

#### *B. Procedural History*

In January 2016, Ms. K began receiving public assistance from the Native Temporary Aid to Needy Families (NTANF) program.<sup>8</sup> As a result, CSSD initiated the process of

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<sup>5</sup> *Id.*

<sup>6</sup> Exhibit 3.

<sup>7</sup> Exhibit 10.

<sup>8</sup> CSSD pre-hearing brief, p. 1; *see also* Exhibit 5, p. 9.

establishing Mr. C's paternity of S, as well as his support obligation. Based on genetic testing results, CSSD issued an order in May 2016 that established Mr. C as S's legal father.<sup>9</sup> Mr. C does not contest that determination.

In March 2016, CSSD ordered Mr. C to provide financial information, so it could establish a child support order.<sup>10</sup> Mr. C did not respond to the request. However, a former employer provided Mr. C's employment history and wage information from March 30, 2015 to December 19, 2015.<sup>11</sup> Based on Mr. C's hourly wage of \$26.93, and assuming a full-time work schedule, CSSD issued an administrative child support order on June 14, 2016, that set his ongoing support obligation at \$765 per month, effective July 1, 2016.<sup>12</sup> It also set arrears of \$765 per month for the six month period from January through June 2016.<sup>13</sup>

Mr. C requested an administrative review.<sup>14</sup> However, he did not participate in the scheduled administrative review hearing.<sup>15</sup> Based on the evidence it had, CSSD issued an Administrative Review Hearing Decision that affirmed its June 14, 2016 child support order.<sup>16</sup> Mr. C appealed.<sup>17</sup> He asserted that he is unemployed and unable to find work, and he cannot afford to pay \$765 per month for child support.

The formal hearing took place on September 28, 2016. Mr. C appeared telephonically, represented himself and testified on his own behalf. Ms. K appeared in person and represented herself. Child Support Specialist Kimberly Sledgister appeared in person and represented CSSD. All submitted documents were accepted into the record. The record remained open after the hearing for additional evidence and argument. CSSD submitted updated proposed child support calculations, based on the evidence presented at the hearing. Mr. C and Ms. K were provided an opportunity to respond to CSSD's supplemental submissions, but they did not do so. The record closed on October 11, 2016.

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9 Exhibit 4.  
10 Exhibit 1, pp. 2-4.  
11 Exhibit 3.  
12 Exhibit 5.  
13 Exhibit 5, p. 9.  
14 Exhibit 6.  
15 Exhibit 8.  
16 *Id.*  
17 Exhibit 9.

### III. Discussion

As the person who filed the appeal, Mr. C has the burden of proving by a preponderance of the evidence that the support obligation in CSSD's June 14, 2016 child support order is incorrect.<sup>18</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>19</sup> This obligation begins when the child is born, but by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child.<sup>20</sup> In this case, Ms. K began receiving public assistance in January 2016, so that is when Mr. C's obligation to pay support through CSSD begins.

Civil Rule 90.3(a)(1) provides that a noncustodial parent'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. The support obligation should be based on the amount the parent can be expected to earn during the period the support is being paid.<sup>21</sup> This determination is necessarily somewhat speculative because the relevant income figure includes expected future income.<sup>22</sup> In cases in which the obligor parent's income is relatively steady, this calculation can be based on the obligor's income from the previous year.

In this case, CSSD relied on Mr. C's 2015 income information when it set his child support obligation at \$765 per month.<sup>23</sup> It based the calculation on his \$26.93 hourly wage, multiplied by 2080 hours, the hourly total over a year for full-time work. This resulted in annual wages of \$56,014.40.<sup>24</sup> It added income of \$2072, the value of the 2015 Permanent Fund Dividend, for total income from all sources of \$58,086.40.<sup>25</sup>

Mr. C's appeal asserted that his 2015 income is not representative of his expected 2016 income. He met his burden on this issue. Mr. C has not earned wage income for more than one week in 2016, and he is still looking for a new job. He has received 2016 unemployment

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<sup>18</sup> 15 AAC 05.030(h).

<sup>19</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>20</sup> 15 AAC 125.105(a)(1)-(2).

<sup>21</sup> Civil Rule 90.3, Commentary, Section III(E).

<sup>22</sup> *Id.*

<sup>23</sup> Exhibit 5.

<sup>24</sup> Exhibit 3, p. 2; Exhibit 5, p. 5.

<sup>25</sup> See Exhibit 5, pp. 5, 8.

benefits of \$8,274, but additional benefits are unlikely this year.<sup>26</sup>

However, Mr. C's support obligation should not be based on his very limited 2016 income, because the evidence in the record shows that he is voluntarily and unreasonably unemployed, primarily as a result of his own choices. Therefore, his child support obligation should be calculated based on his "potential income."<sup>27</sup>

It is not necessary to prove that a noncustodial parent is purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to that parent.<sup>28</sup> The Alaska Supreme Court has explained that "the relevant inquiry under Civil Rule 90.3 is . . . whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning."<sup>29</sup> 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."<sup>30</sup>

A number of factors support the determination that Mr. C is voluntarily and unreasonably unemployed. Although Mr. C did not explain why his apprenticeship positions from 2013 through 2015 were all short-term, it is clear that he lost his last job after one week because he did not show up for work, without justification. He testified at the hearing that he missed work because he was trying to reconcile with Ms. K. The decision to skip work was clearly an unreasonable one, particularly given that Mr. C had just started a new job after six months of unemployment.

Mr. C remains unemployed, because he has not put sufficient effort into finding a new job, either in plumbing or in another field.<sup>31</sup> He asserted very generally that he has looked for work, but he provided vague and non-specific information regarding his efforts. He specifically identified several employers that he planned to approach for work in the near future, but he did not explain why he had not already done more, given length of time he has been unemployed.

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<sup>26</sup> Mr. C explained at the hearing that he is currently ineligible for unemployment benefits, because he was terminated from his last job for cause. Testimony of U C.

<sup>27</sup> See Civil Rule 90.3(a)(4); *Kowalski v. Kowalski*, 806 P.2d 1368, 1370-71 (Alaska 1991).

<sup>28</sup> See *Kowalski v. Kowalski*, 806 P.2d 1368, 1370-71 (Alaska 1991).

<sup>29</sup> *Beaudoin v. Beaudoin*, 24 P.3d 523, 528 (Alaska 2001).

<sup>30</sup> *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997); see also *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998); Civil Rule 90.3, Commentary III.C (Tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income.").

<sup>31</sup> See *Houger v. Houger*, 449 P.2d 766, 770 (Alaska 1969) (when a noncustodial parent's preferred field of employment is no longer available, he is required to seek other kinds of work in order to support his children).

He also did not adequately explain why he has not looked for jobs in other fields, even as a temporary source of income, since he agreed that he is physically capable of doing other types of work.

Mr. C lives in No Name, so his job search can include No Name and the No Name, where numerous job opportunities are available. Mr. C's extended period of unemployment therefore is not the result of a limited job market. It reflects his voluntary and unreasonable choice to earn less than he is capable of earning.

As a result, it is appropriate to calculate Mr. C's child support obligation based on his "potential income," which takes into account his work history, qualifications and job opportunities.<sup>32</sup> Mr. C's skills and experience as a plumber's apprentice are assets that should make him employable, either in plumbing or in other areas. His income from this work has varied significantly in recent years, though it should increase substantially if he obtains his certification as a plumber, as he hopes to do.<sup>33</sup> Because he has not yet obtained that certification, and his income has been erratic, it is most reasonable to calculate his potential income by averaging his earnings from 2013 through 2015.<sup>34</sup>

According to Department of Labor data, Mr. C earned \$22,112.02 in 2013, \$29,912.98 in 2014, and \$68,936.99 in 2015, for an average gross income of \$40,320.66.<sup>35</sup> With his 2016 PFD of \$1,022, his potential income totals \$41,342.66. After appropriate deductions, this income results in a child support obligation of \$565 per month.<sup>36</sup>

#### **IV. Conclusion**

Mr. C met his burden to show that his child support obligation should not be set based solely on his 2015 income, since he lost that job. However, based on the evidence in the record, his extended period of unemployment is the result of a voluntarily and unreasonable choice not to work. Therefore, his child support should be calculated under Civil Rule 90.3(a) based on his average income over the past three years, plus his Alaska PFD. This yields a child support figure

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<sup>32</sup> Civil Rule 90.3(a)(4).

<sup>33</sup> See Exhibit 12.

<sup>34</sup> See *Kowalski*, 806 P.2d at 1372 (approving reliance on average income when a voluntarily unemployed obligor's income history has been erratic).

<sup>35</sup>  $(\$22,112.02 + \$29,912.98 + \$68,936.99) / 3 = \$40,320.66$ .

<sup>36</sup> See Attachment A, calculation from support calculator at: <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

of \$565 per month, effective July 1, 2016 and ongoing. His arrears also should be \$565 per month, for January through June 2016.

If Mr. C's circumstances make it impossible for him to meet his support obligation, he can seek a modification of the award at a later time.

**IV. Child Support Order**

- Mr. C is liable for child support for S in the amount of \$565 per month for January through June 2016; and \$565 per month, effective July 1, 2016 and ongoing;
- All other provisions of the Administrative Child and Medical Support Order dated June 14, 2016, remain in full force and effect.

DATED October 17, 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 1<sup>st</sup> day of November, 2016.

By: Signed  
Signature  
Kathryn A. Swiderski  
Name  
Administrative Law Judge  
Title

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