

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

In the Matter of)	
)	
S T)	OAH No. 17-0586-CSS
_____)	Agency No. 001169103

DECISION AND ORDER

I. Introduction

S T appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on February 28, 2017. The order increased Mr. T's monthly child support obligation from \$50 to \$281 effective December 1, 2016, based on estimated earnings equivalent to full-time employment at minimum wage.

The previous order in this case was based on the fact of Mr. T's incarceration. Mr. T testified that he is no longer incarcerated, but is working part time in exchange for room and board rather than wages. Based on this, the division revised its estimate of his income based on part-time employment at minimum wage.

Based on the division's revised calculations, Mr. T's child support obligation should be increased from \$50 a month to \$141 a month, effective December 1, 2016.

III. Facts

S T and K H have one child, M, who lives with Ms. H. In 2011, the division set Mr. T's child support for M at \$50 a month, based on information that he was awaiting sentencing and would be either incarcerated or in a treatment facility.¹

In November 2016, Ms. H requested a modification of Mr. T's child support obligation. On November 17, 2016, the division notified Mr. T of the request for modification and requested income information from both parents.² Ms. H provided paystubs and a copy of her tax return. Mr. T did not provide information.

Because it did not have actual income information for Mr. T, the division estimated his income based on full-time employment at the minimum wage of \$9.30 an hour.³ On February 28, 2017, the division issued a modified order setting Mr. T's ongoing monthly child support

¹ Exhibit 1 at 1, 4.
² Ex. 2.
³ Ex. 4 at 5.

obligation at \$281 based on estimated income.⁴ On May 8, 2017, Mr. T requested a hearing, arguing that he is unemployed and paying that amount would create a hardship.⁵

Mr. T is no longer incarcerated. He is currently working 25 to 30 hours a week at a ranch in Colorado in exchange for room and board. He is seeking paid employment, but employment opportunities where he lives are limited. He has applied for jobs, including a position at the local gas station. However, after a background check, he was not hired because he has three felony convictions, including the one resulting in incarceration. He continues to seek employment for wages.⁶

A telephonic hearing was held on June 20, 2017. Mr. T and Ms. H participated. Child Support Specialist Joe West presented the division's case. The record closed on June 20, 2017.

III. Discussion

Alaska Rule of Civil Procedure Rule 90.3 governs the calculation of child support in this case. The rule considers an obligor parent's total income from all sources, less certain mandatory deductions including state income taxes. The rule sets child support as a percentage of the obligor parent's adjusted annual income. For one child, the obligation is 20 percent of adjusted income.⁷

The previous child support order in this case, issued in 2011, set Mr. T's child support obligation at \$50 due to a lack of income based on his incarceration. Fifty dollars is the minimum child support obligation under Civil Rule 90.3, and a minimum order is generally appropriate when an obligor is incarcerated.⁸

However, Mr. T is no longer incarcerated. He is currently working in exchange for room and board. He does not receive cash wages. Income is defined very broadly for purposes of Civil Rule 90.3. The commentary to the rule specifically includes as income "perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing (including military housing)."⁹ Because room and board are in-kind compensation that reduce Mr. T's living expenses, they are counted as income for purposes of Rule 90.3.

⁴ Exhibit 4 at 1.

⁵ Ex. 5 at 1.

⁶ Testimony of T.

⁷ Alaska Rule of Civil Procedure 90.3(a)(1) and (2).

⁸ *In re K.R.T.*, 13-1659-CSS at 2, citing *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998).

⁹ Commentary to Civil Rule 90.3 at III.A.19.

Mr. T did not provide an estimate of the value of the room and board. At the hearing, the division estimated that the value would be roughly equivalent to half-time employment at minimum wage. After mandatory deductions, including Colorado state income tax, the division calculated the corresponding child support obligation at \$141 a month.¹⁰

Mr. T argued that paying this amount would still constitute a hardship for him because he has no cash income, and he would need to borrow the money each month from his mother. Civil Rule 90.3 provides for an exception to the usual child support formula where unusual circumstances exist that make application of the usual formula unjust.¹¹ However, the formula in Civil Rule 90.3(a) “must be applied even in low-income situations.”¹² Mr. T has income, and Mr. T has not demonstrated that there are unusual circumstances making application of the usual formula unjust in this case.

IV. Conclusion

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹³ In a child support hearing, the person who filed that appeal has the burden of proving by a preponderance of the evidence that the division’s order is incorrect.¹⁴ The evidence in this case shows a material change of circumstances since issuance of the previous order setting Mr. T’s child support at the minimum of \$50, namely, Mr. T has been released from incarceration and is employed, albeit in exchange for room and board rather than wages. Mr. T has not shown that the division’s revised calculation based on part-time employment is incorrect. Therefore, Mr. T’s ongoing child support should be set at \$141.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁵ The division provided notice of the petition for modification in this case in November 2016 so this modification is effective as of December 1, 2016.¹⁶ The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

¹⁰ Statement of West.

¹¹ Alaska Rule of Civil Procedure 90.3(c)(1); Commentary to Civil Rule 90.3 at VI.B.

¹² Commentary to Civil Rule 90.3 at VI.C.

¹³ Alaska Civil Rule 90.3(h)(1).

¹⁴ 15 AAC 05.030(h).

¹⁵ 15 AAC 321(d).

¹⁶ Exhibit 2.

V. Child Support Order

1. Mr. T’s monthly child support for M is modified to \$141 a month, effective December 1, 2016 and ongoing.

2. All other provisions of the division’s Modified Child Support and Medical Support Order issued on February 28, 2017 remain in effect.

Dated: June 20, 2017.

Signed _____
Kathryn L. Kurtz
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 within 30 days after the date of this decision.

DATED this 7th day of July, 2017.

By: *Signed* _____
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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