

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

In the Matter of)	
)	
S F)	OAH No. 18-0115-CSS
_____)	Agency No. 001161150

DECISION AND ORDER

I. Introduction

Custodial parent U T appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 18, 2017. The modified order reduced S F’s monthly child support obligation for the parties’ son, Z, to \$77 per month, effective September 1, 2017 and ongoing.

Based on the evidence in the record and after careful consideration, the modified support order is affirmed. Mr. F has been incarcerated for twelve of the past fourteen months, and he was incarcerated at the time of the hearing in this case. Incarceration has precluded regular employment, and CSSD appropriately calculated Mr. F’s child support obligation based on his actual income from corporation dividends. After Mr. F is released from custody and able to earn wage income, another modification review may be appropriate.

II. Facts

Mr. F and Ms. T have one child, Z, age 9. Z lives with Ms. T. Both parents are shareholders of the No Name Corporation (No Name).¹ In March 2010, CSSD set Mr. F’s ongoing monthly child support obligation for Z at \$350 per month.²

Mr. F served a twelve-month jail sentence from mid-December 2016 through mid-December 2017.³ While in jail, in August 2017, he requested a modification review. On August 21, 2017, CSSD served on each parent a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. F submitted notarized child support guidelines affidavits for 2016 and 2017 showing no earned income.⁵

On December 18, 2017, CSSD issued a decision granting the requested modification.⁶ The same day, it issued the Modified Administrative Child Support and Medical Support Order

¹ F testimony; T testimony.
² Exhibit 1.
³ F testimony; CSSD hearing representative statement.
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ Exhibit 4

that is the subject of this appeal.⁷ The modified order adjusted Mr. F's monthly child support amount to \$77, effective September 1, 2017. CSSD calculated this obligation based only on Mr. F's expected annual dividends of \$5,000 as an No Name shareholder.

Ms. T requested a formal hearing.⁸ The hearing took place by telephone on February 15, 2018. Ms. T and Mr. F represented themselves and testified on their own behalf. Child Support Specialist Brandi Estes represented CSSD. The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

The evidence at hearing established that Mr. F has not earned any reported wages since 2014. He does not receive the PFD. His current sole source of income is his No Name dividends, which are used primarily to pay ongoing and past-due child support for Z.

Mr. F asserted that he has actively looked for jobs when he is not in jail, but without success. It is not clear when Mr. F made these efforts and whether they involved a serious commitment to finding employment. Regardless, Mr. F's ability to work and earn income has been quite limited by significant periods of incarceration during the last two years. For example, he was incarcerated for 4 months from March 29, 2016 through July 28, 2016. He was out of custody for roughly four and a half months before returning to jail in mid-December 2016. He was released a year later, on December 14, 2017, but was back in custody within two months, on February 7, 2018. He remained in jail at the time of the formal hearing, asserting that he expects to be released around March 8, 2018.

III. Discussion

Ms. T filed the appeal in this matter, so she has the burden of proving by a preponderance of the evidence that the December 18, 2017 Modified Administrative Child Support and Medical Support Order is incorrect.⁹

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order should be modified. Mr. F's prior child support amount was

⁷ *Id.*

⁸ Exhibit 5.

⁹ 15 AAC 05.030(h).

¹⁰ AS 25.27.190(e). *See also* Civil Rule 90.3(h)(1).

\$350. Therefore, a calculation that reduces his monthly obligation by \$52.50 or more would meet this standard.¹¹

A parent is obligated both by statute and at common law to support his or her children.¹² 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 specified deductions. Throughout 2017 and up to the present time, Mr. F's No Name dividends have been his sole source of income. This is largely due to his incarceration for all but two weeks of 2017 and his re-incarceration on February 7, 2018.

Ms. T argued that Mr. F has not made a serious effort to find employment, and numerous employment opportunities are available to No Name shareholders, who receive priority consideration. She also explained that \$77 per month is inadequate and will cover only a small portion of her actual expenses for Z.

Despite Ms. T's understandable objections, Mr. F is not able to earn income while he is incarcerated. Because of his current status and recent history, CSSD reasonably concluded that his child support obligation must be based only on his actual income; the calculation should not include imputed wage income. This result is required by the Alaska Supreme Court's determination that -- even viewing criminal activity as voluntary conduct and incarceration as a foreseeable consequence of that conduct -- incarceration is not equivalent to voluntary unemployment.¹³ Jailed parents typically cannot alter their employment status, and they seldom engage in criminal activity for the purpose of becoming or remaining unemployed.¹⁴

Given his extended periods of incarceration since 2016, CSSD properly concluded that Mr. F's changed financial circumstances are more than a temporary setback. His actual income results in a \$77 support obligation for one child, which CSSD correctly adopted in the modified child support order.

Once Mr. F is released and again able to work, this analysis is likely to change. If he is able to earn income, but voluntarily and unreasonably chooses not to, his child support may be calculated based on the potential income Mr. F would earn, taking into consideration his work history, qualifications and job opportunities.¹⁵ Therefore, as discussed during the hearing, the

¹¹ \$350 x 15% = \$52.50.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ *Bendixen v. Bendixen*, 962 P.2d 170, 173 (Alaska 1998).

¹⁴ *Id.*

¹⁵ 15 AAC 125.060(a); Civil Rule 90.3, Commentary III.C.

parties may wish to request another modification review after Mr. F has been released and has had an opportunity to engage in a job search. At present, there is insufficient information in the record, and it would be premature, to make findings regarding Mr. F's likely release date, post-release conditions, employment opportunities, and ability to work.

IV. Conclusion

CSSD correctly calculated Mr. F's modified child support obligation based on his annual corporation dividend income. After applicable deductions, this income results in an ongoing support amount of \$77 per month for one child, calculated under the Civil Rule 90.3(a) primary custody formula without variation. This amount reflects a material change of circumstances, and CSSD properly issued the modification. The Modified Administrative Child Support and Medical Support Order dated December 18, 2017, is affirmed.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated December 18, 2017, is affirmed and remains in full force and effect.

DATED: February 21, 2018.

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 7th day of March, 2018.

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

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