

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

IN THE MATTER OF)	OAH No. 04-0153-CSS
E R)	DOR No. 040755
)	CSSD No. 001131419
_____)	

DECISION AND ORDER

I. Introduction

On December 15, 2004, a formal hearing was held to consider the child support obligation of E R (Obligor) for the support of his children, W and J, (Obligees).¹ The Obligor appeared. The Custodian, A J. B, also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (CSSD). The hearing was tape-recorded. The record closed at the end of the hearing.

This case is Mr. R's appeal of CSSD's order establishing child support for his children.

I, Mark T. Handley, Administrative Law Judge for the Alaska Office of Administrative Hearings was appointed to hear this appeal by the Chief Administrative Law Judge, Terry Thurbon.

Having reviewed the record in this case and after due deliberation, I concluded that the Obligor's child support arrears and ongoing child support should be set at \$50 per month based on his poverty and below poverty level income.

II. Facts

A. History

The children, W and J, received public assistance medical, beginning in June of 2004. Paternity is not in dispute. Mr. R is named as the father on the children's birth certificates.

CSSD served Mr. R with an Administrative Child and Medical Support Order on August 25, 2004. This order set the Mr. R's child support at the minimum of \$50 per month. Mr. R requested an administrative review.

CSSD issued an Amended Administrative Child and Medical Support Order on October 11, 2004. CSSD raised Mr. R's child support to \$222 per month based on imputed earnings. The order established arrears in this monthly amount going back to June of 2004. Mr. R

appealed that amended order. He requested a formal hearing.

B. Findings

Based on the evidence in the record I find that it is more likely than not that:

1. Mr. R's children received public assistance beginning in June of 2004.²
2. Mr. R is not unreasonably under-employed. He is working at a reasonable plan to maximize his earnings to provide for himself and his children, over the long term, given his limited job skills and his disabilities.³
3. Mr. R's annual income is below the federal poverty level.⁴

There is clear and convincing evidence that manifest injustice will occur if the Obligor's arrears and ongoing child support are set above \$50 per month.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. R, has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.⁵ CSSD set Mr. R's child support based on full-time Alaska minimum wages plus a PFD.

Mr. R explained that he did not earn the income CSSD had used to calculate his child support.

At the hearing, Mr. R explained that he had been a native wood carver. Ms. B had worked with him on this business. It was successful for some time but failed shortly after the drop in tourism that followed September 11th. Ms. B suffers from disabilities and receives public assistance. After their business failed, both Mr. R and Ms. B enrolled in school full-time. Mr. R concluded that the only way he could support himself as an artist was to get a degree in art. Mr. R lived with the children and Ms. B until June of 2004. They had been supporting themselves on student loans and what Mr. R could earn working part-time as a cook. Mr. R has severe arthritis in his hands. He recently shattered his leg, requiring that two plates and sixteen pins be placed in his ankle. He spent June through September 2004 in jail. He has already earned 105 credits toward graduation.

¹ The hearing was held under Alaska Statute 25.27.170.

² CSSD's Pre Hearing Brief, Ex. 4, page 10.

³ Tape of Hearing.

⁴ Tape of Hearing.

⁵ Alaska Regulation 15 AAC 05.030(h).

A parent is obligated both by statute and at common law to support his or her children.⁶ This obligation begins when the child is born.⁷ By regulation, CSSD collects support from the date the custodial parent requested child support services, the first month public assistance was paid on behalf of a child, which includes children in foster care, up to six years prior to service on the Obligor of notice of the action.⁸

Civil Rule 90.3 provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources."⁹ The child support liability is calculated as a certain percentage of the obligor's adjusted annual (net) income, depending on the number of children for whom support is to be paid.¹⁰

Income can be imputed an obligor in cases of unreasonable voluntary underemployment.¹¹ The Alaska Supreme Court has recognized that an Obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.¹² On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹³

Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.¹⁴ The custodial parent should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.¹⁵ The Alaska Supreme Court has indicated that the circumstances surrounding an obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.¹⁶

Mr. R is not unreasonably under-employed. Mr. R seems to be doing the best he can to provide for himself and his family, but his efforts unfortunately result in an income that is far

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030

⁷ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999)

⁸ Alaska Regulation 15 AAC 125.105(a)(1)-(2).

⁹ Alaska Civil Rule 90.3(a)(1).

¹⁰ Alaska Civil Rule 90.3(a).

¹¹ Alaska Civil Rule 90.3(a)(4).

¹² *See Pattee vs. Pattee*, 744 P.2d 659 (Alaska 1987).

¹³ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

¹⁴ *See Pattee vs. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁵ *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987)

¹⁶ *See Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 2002)

below the federal poverty level. It is not appropriate to impute income to the Obligor. It is in the best interest of his children that Mr. R continue his struggle to finish college. Given his significant physical disabilities and the investment his family has already made in his education, it is reasonable for him to continue to be a full-time student and attempt to find part-time work. This path is the most likely way for Mr. R to achieve an earning capacity that will allow him to support himself and his children.

Even when an obligor's income is below the federal poverty level, setting the support level at the minimum is not automatic.¹⁷ A minimum order is appropriate in this case. Mr. R has significant debts and has had great difficulty finding any part-time work lately. Adding any more child support debt than is absolutely necessary would be unjust because it would further decrease the Mr. R's chances of success with his studies.

Ms. B was supportive of setting the Obligor's support at the minimum. She explained that CSSD had originally set his child support at \$50 in its Administrative Child and Medical Support Order. It was raised in CSSD's Amended Administrative Child and Medical Support Order. She suggested that Mr. R had probably appealed CSSD's \$50 Administrative Child and Medical Support Order in error. Ms. B explained that Mr. R was used to having her take care of most of his paperwork.

IV. Conclusion

CSSD correctly established arrears going back to the month that an application for public assistance was filed for the children. I find the Obligor's arrears and his ongoing child support should be set at the \$50 minimum monthly amount permitted under Civil Rule 90.3(c)(1)(B).

V. Child Support Order

1. E R owes ongoing child support of \$50 per month, effective March 1, 2005.
2. E R is liable for child support arrears in this case in the amount of \$50 for the months of June through December of 2004, and \$50 per month for the months of January through February of 2005.

DATED this 10th day of February, 2005.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁷ Civil Rule 90.3(c)(1)(B).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of E R be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of the written decision of the hearing officer, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 10th day of February, 2005.

By: Signed
Terry Thurbon
Chief Administrative Law Judge

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