

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

IN THE MATTER OF: )

W. F. A. )

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) OAH No. 04-0155-CSS

) CSSD NO. 001127600

) DOR NO. 040757

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor W. F. A.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 24, 2004. The Obligee child is C., DOB 00/00/03.

The formal hearing was held on December 21, 2004. Mr. A. did not appear; the Custodian of record is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on December 31, 2004.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. A.'s appeal should be granted; his child support should be calculated from his actual income, including Native corporation dividends, but without the PFD for 2003 and 2004, and without the \$3288 amount that CSSD added to his income in 2003.

**II. Facts**

**A. History**

On August 20, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. A.<sup>1</sup> He requested an administrative review.<sup>2</sup> On September 24, 2004, CSSD issued an Amended Administrative Child and Medical Support Order that set ongoing child support at \$568 per month, with arrears of \$5661 for the period from October 2003 through September 2004.<sup>3</sup> Mr. A. filed an appeal on October 22, 2004. It states he did not receive the PFD in 2003 or 2004, and CSSD calculated his 2004 income too high.<sup>4</sup>

Prior to the formal hearing, CSSD revised the calculations for 2003 and 2004, and prepared a calculation for 2005 based on Mr. A.'s 2004 income. The 2003 calculation includes as income Mr. A.'s wages of \$2117, Native corporation dividends of \$8313, and \$3288, an

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<sup>1</sup> Exh. 4.

<sup>2</sup> Exh. 5.

<sup>3</sup> Exh. 8.

amount equal to an amortization deduction Mr. A. took on his 2003 tax return.<sup>5</sup> CSSD also removed the PFD for that year. The resulting calculation yielded a child support amount of \$224 per month.<sup>6</sup>

CSSD's revised 2004 calculation includes wages of \$27,700.21 and Native corporation dividends of \$10,383.07.<sup>7</sup> Again, CSSD removed the PFD. The calculation resulted in a child support amount of \$526 per month.<sup>8</sup>

CSSD prepared a new calculation for 2005 using the same figures as the 2004 calculation, but with the PFD added based on CSSD's estimation Mr. A. would receive one in 2005. The resulting child support amount is \$537 per month.<sup>9</sup>

Mr. A. did not appear for the formal hearing. CSSD explained its revised calculations and said that Mr. A. is currently employed at a local sausage making company.

At the close of the hearing, CSSD was directed to prepare and file another calculation for 2003 without the \$3288 figure that CSSD added to Mr. A.'s income.

After the hearing, CSSD filed copies of two of Mr. A.'s paystubs from September and October 2004.<sup>10</sup> CSSD also filed another calculation for 2003 that eliminated the \$3288 income figure equal to Mr. A.'s tax return amortization. The new calculation results in a child support amount of \$169 per month for 2003.<sup>11</sup>

## **B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. A. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. Mr. A. did not receive a PFD in 2003 or 2004;
3. The \$3288 amortization figure is not income that can be attributed to Mr. A. as income for 2003;

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<sup>4</sup> Exh. 9.

<sup>5</sup> Exh. 7 at pg. 13.

<sup>6</sup> Exh. 10 at pg. 2.

<sup>7</sup> Exhs. 10 at pg. 3 & Exh. 7 at pg. 1.

<sup>8</sup> Exh. 10 at pg. 3.

<sup>9</sup> Exh. 10 at pg. 4.

<sup>10</sup> Exh. 11.

<sup>11</sup> Exh. 13 at pg. 2.

4. CSSD correctly calculated Mr. A.'s child support obligation at \$169 per month for 2003, \$526 per month for 2004, and \$537 per month for 2005.

### III. Discussion

Mr. A. filed an appeal on October 22, 2004. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> Civil 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."

CSSD corrected Mr. A.'s child support calculations for 2003 and 2004 by eliminating the PFD from his income for those years. CSSD also calculated Mr. A.'s 2005 child support based on his current income from wages. The only issue remaining is whether an amount equal to Mr. A.'s \$3288 amortization deduction in 2003 can be added to his income for child support purposes.

Civil Rule 90.3 does not have a specific formula for determining the income of a self-employed Obligor, but the Commentary to the Rule does provide this guidance:

Self Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.<sup>[13]</sup>

The Alaska Supreme Court concluded, in a case called Gallant v. Gallant, that for a parent who has income from both wages and self-employment, his or her business expenses cannot be deducted from income unless the business serves as an "income source" for the parent.<sup>14</sup> In Gallant, the obligor parent derived most of his income from state employment, but he also had a corporation that operated at a net loss. In that case, the Alaska Supreme Court

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

<sup>13</sup> Civil Rule 90.3, Commentary III.B.

<sup>14</sup> *Gallant v. Gallant*, 945 P.2d 795 (Alaska 1997).

looked at whether the corporation was an “income stream” for the obligor. Since the business regularly operated at a loss, the court held that Mr. Gallant could not deduct his business expenses from the income he received from his employment.<sup>15</sup>

In this case, CSSD added the amount of \$3288 to Mr. A.’s 2003 income to reflect an amortization deduction he took on his tax return. CSSD stated the reason is because the amortization is not an actual business expense; rather, it is merely a paper loss that is spread out over several years to account for Mr. A.’s purchase of a fishing permit in 1995.

CSSD correctly states that the amortization is a paper loss and not an actual expense. But the bottom line is that Mr. A.’s self-employment is irrelevant to his child support obligation because he was incarcerated in 2003 and did not fish at all.<sup>16</sup> Mr. A. did not report any income on his Schedule C, and he listed just three deductions: depreciation of \$749, tax and license fees of \$133, and the amortization deduction of \$3288.<sup>17</sup> Since Mr. A. had no income from self-employment in 2003, his deductions cannot be considered in the child support calculation. Mr. A.’s income for 2003 was derived primarily from Native corporation dividends and a small amount of wages. His child support obligation should be calculated from these figures.

#### **IV. Conclusion**

Mr. A. did not receive a PFD in 2003 or 2004. CSSD corrected his support obligation for those two years by removing the PFD from his income. CSSD has now revised the 2003 calculation by removing the amortization figure from his income, and the agency has prepared a 2005 support calculation using his actual income. CSSD’s latest revised figures should be adopted.

#### **V. Child Support Order**

1. Mr. A. is liable for child support in the amount of \$169 per month for October 2003 through December 2003; \$526 per month for 2004; and \$537 per month for January 2005 through May 2005;

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<sup>15</sup> *Id.* at 799.

<sup>16</sup> Exh. 12.

<sup>17</sup> Exh. 7 at pg. 12.

2. Mr. A. is liable for ongoing child support in the amount of \$537 per month, effective June 1, 2005.

DATED this 25th day of May, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of W. F. A. 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 this decision, 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 25th day of May, 2005.

By: \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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