

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

IN THE MATTER OF: )

B. E. G. )

---

) OAH No. 04-0216-CSS  
) CSSD NO. 001129723  
) DOR NO. 040822  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor B. E. G.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 14, 2004. The Obligee child is J., DOB 00/00/04.

The formal hearing was held on February 1, 2005. Mr. G. did not appear; the Custodian, N. J. B., participated in person. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on February 11, 2005.

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. G.'s appeal should be denied; CSSD correctly calculated his child support obligation at \$523 per month.

**II. Facts**

**A. History**

On August 19, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. G.<sup>1</sup> He requested an administrative review.<sup>2</sup> On October 14, 2004, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. G.'s ongoing child support at \$523 per month, with arrears of \$4707 for the period from February 2004 through October 2004. CSSD found Mr. G. voluntarily unemployed and calculated his child support from annual income of \$35,623.24, which consists of imputed earnings of \$24,528.40, based on three quarters of bus driver wages and one quarter of minimum wage earnings, the PFD of \$919.84, and Native corporation dividends of \$10,175.<sup>3</sup>

---

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

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

<sup>3</sup> Exh. 7.

Mr. G. filed an appeal on November 24, 2004.<sup>4</sup> It states bus drivers work 5.5 hours per day, not eight hours, and for only nine months of the year, not twelve. The appeal also claims that having his commercial driver's license (CDL) suspended does not mean he is voluntarily unemployed.

Mr. G. did not appear for the formal hearing. CSSD stated Alaska Department of Labor records indicate Mr. G. worked as a bus driver in the year 2000, and he had a minimal amount of janitorial income in 2002, but no reported income in 2001, 2003 or 2004.<sup>5</sup> CSSD said it appears Mr. G. has been living off his dividends from Cook Inlet Region, Inc. (CIRI), a Native corporation that has paid out significant dividends in the past few years. As to his current work status, CSSD said Mr. G. submitted paystubs with his appeal that indicate he began working on August 2, 2004, and earns \$14.50 per hour.<sup>6</sup> CSSD also said it has no information about Mr. G.'s CDL being suspended because it was not a CSSD action.

The Custodian, Ms. B., stated she had contact with Mr. G. about one month before the hearing. Ms. B. said she asked Mr. G. why he did not work, and he responded that he was not obligated to give her anything.

### **B. Findings**

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

1. Mr. G. did not meet 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. G. received and signed for his notice of the date and time for the hearing on January 3, 2005;
3. Mr. G. did not appear at the hearing to provide evidence regarding his appeal;
4. CSSD correctly calculated Mr. G.'s child support obligation at \$523 per month, effective February 2004.

### **III. Discussion**

Mr. G. filed an appeal on November 24, 2004. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which

---

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

<sup>5</sup> Exh. 11.

<sup>6</sup> See Exh. 10.

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>7</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 found Mr. G. voluntarily unemployed.<sup>8</sup> Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.<sup>9</sup>

It is not necessary to prove the parent was purposefully avoiding a support obligation, or acting in bad faith, in order to find voluntary unemployment or underemployment.<sup>10</sup> The Alaska Supreme Court has upheld lower court decisions finding noncustodial parents voluntarily unemployed or underemployed who were not making their best efforts to obtain or retain employment. For example, the Obligor in Kowalski claimed seasonal construction work and his health had contributed to his erratic work history. On appeal, the court affirmed the trial court's finding that the Obligor was voluntarily unemployed because he had not made "any major effort to remain employed" after the parties' marriage.<sup>11</sup>

In another case, the Alaska Supreme Court upheld a lower court's finding that the Obligor parent was voluntarily underemployed because the Obligor deliberately kept a low profile in his business. He did not market his services or have a listed telephone number, he did not operate a large piece of equipment that could have earned more money, and he did not hire additional employees to keep his shop busy. As a result, the court considered him not to be earning his "optimal" income and stated he could be considered voluntarily underemployed.<sup>12</sup>

If a parent is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income," which is based on the parent's "work history, qualifications and job opportunities."<sup>13</sup> The use of "potential income" in calculating a child support obligation is not to punish the Obligor parent; rather, it is to ensure that the children and

---

<sup>7</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>8</sup> Exh. 7 at pg. 7.

<sup>9</sup> Civil Rule 90.3(a)(4).

<sup>10</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).

<sup>11</sup> *Id.* at 1370.

<sup>12</sup> *Nass v. Seaton*, 904 P.2d 412, 418 (Alaska 1995).

the other parent are not “forced to finance” the Obligor parent's lifestyle.<sup>14</sup> The commentary states “the totality of the circumstances” should be considered in deciding whether to impute income to the obligor parent.<sup>15</sup>

CSSD calculated Mr. G.’s child support for 2004 based on imputed income - three quarters of bus driver earnings and one quarter of the Alaska minimum wage.<sup>16</sup> CSSD also included his Native corporation dividends of \$10,175, and the \$919.84 PFD.<sup>17</sup>

After having considered the “totality of the circumstances,” I find that Mr. G. did not meet his burden of proving by a preponderance of the evidence that CSSD’s determination he was voluntarily unemployed is incorrect. Mr. G.’s appeal statements were not persuasive. He did not list any problem or event that would prevent him from finding and keeping employment. Since he could have worked, and did not, Mr. G.’s unemployment was therefore voluntary.

Thus, CSSD’s order finding Mr. G. voluntarily unemployed was reasonable, and based on the record as a whole, I conclude CSSD’s Amended Administrative Child Support and Medical Support Order should be affirmed.

#### **IV. Conclusion**

Mr. G. did not meet his burden of proving CSSD’s Amended Administrative Child Support and Medical Support Order is incorrect. CSSD’s finding that he was voluntarily unemployed was reasonable.

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

1. CSSD’s October 14, 2004, Amended Administrative Child Support and Medical Support Order is affirmed;

---

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

<sup>14</sup> *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

<sup>15</sup> Civil Rule 90.3, Commentary III.C.

<sup>16</sup> Exh. 8 at pg. 2.

<sup>17</sup> *Id.*

2. Mr. G. is liable for child support in the amount of \$523 per month for the period from February 2004 through June 2005, and ongoing.

DATED this 16th day of June, 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 B. E. G. be adopted as of this date and entered in the 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 16th day of June, 2005.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

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