

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

IN THE MATTER OF )  
 )  
 R. W. ) Case No. OAH-06-0872-CSS  
 ) CSSD Case No. 001063067  
\_\_\_\_\_)

**CORRECTED AMENDED DECISION & ORDER<sup>1</sup>**

**I. Introduction**

The obligor, R. W., appealed a decision of the Child Support Services Division (CSSD) dated November 28, 2006 to deny a request for a modification review. The child is S. W.-D. (DOB 00/00/96). Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January 17, 2007, with supplemental hearings on March 15, 2007, and June 28, 2007. Mr. W. appeared by telephone, as did the custodian of record, N. D., at each of these hearings. Andrew Rawls represented CSSD. Upon closing of the record, the administrative law judge issued a proposed decision. At Mr. W.'s request, the commissioner ordered "that the case be returned to the administrative law judge to take additional evidence about B. W.'s business income and the extent of R. W.'s involvement with ABC Campus Photography." Mr. W. submitted a copy of Ms. W.'s 2005 tax return and a joint tax return for 2006, but he did not request a supplemental evidentiary hearing so that Ms. W. could testify.

**II. Facts**

The following findings of fact from the original proposed decision of January 30, 2008, are herein adopted:

Mr. W. is a 33-year-old high school graduate who works part-time for Domino's Pizza as a delivery driver. Mr. W. has worked for Domino's intermittently for about ten years. Around 2003, Mr. W. worked for Cellular One as a business account representative. In this position, Mr. W. earned \$22,000 per year in salary and more than twice that amount in commissions. According to Department of Labor records, in just the first three quarters of 2003, Mr. W. earned \$62,983.54.

Despite the evidence that he was earning substantial commissions, Mr. W. testified that back in 2003 he had been having trouble meeting his sales quotas at Cellular One. Mr. W.

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<sup>1</sup> The Amended Decision & Order issued on June 18, 2008, contained a typographical error on page 5 in the Order section. Support was incorrectly set at \$541 per month. The Discussion and Conclusion sections both stated that support should be \$549 per month, in accordance with calculations at Exhibit 15. This decision and order corrects the typographical error; no other changes have been made.

testified that the company generally dismissed employees who did not make their quotas for three consecutive months. Mr. W. blames the company for hiring an extra account representative, thus increasing competition in a shrinking pool of potential accounts. When the company denied Mr. W.'s request for transfer to a position without a quota requirement, Mr. W. gave his two-week notice and quit the job some time in 2003. Mr. W. testified that he thought the company probably would have fired him if he hadn't quit, but he did not wait to find out.

Around the time he quit his job with Cellular One, Mr. W. married his current wife, B. W., nee S. in December of 2003. Mr. W. testified that his wife works on an exclusive contract basis for ABC, a company that provides school pictures, yearbooks, class rings, graduation gowns, and similar items to the schools in Town.

Based on things S., their child, had told her after returning from spending her summer visitation with Mr. W., Ms. D. questioned whether Mr. W. wasn't actually working for his wife's business. Mr. W. was vague and evasive in response to questions about his contributions to his wife's business. Mr. W. attempted to minimize his participation in the business that provides most of his household's income. Mr. W. testified that he helps out with computer problems a few times per year, and that he frequently goes to visit his wife at her office during the workday, but that he does not participate in the business in any significant capacity. Mr. W. testified that he had no idea how much his wife might be earning per year. Although CSSD served her with subpoenas to testify about her business and Mr. W.'s involvement in it, Ms. W. refused to testify at the hearing. Mr. W. did join CSSD in asking Ms. W. to testify. Mr. W. was not a credible witness.

Mr. W.'s testimony that he does not work for his wife or ABC is contradicted by several documents. The newspaper article announcing their wedding stated that Ms. W. "is self-employed at ABC Campus Photography." The article went on to state that Mr. W. "is also employed by ABC Campus Photography."<sup>2</sup> An ABC website lists three contact names for customers wishing to order school photos, caps and gowns, and class rings: B. S., J. S., and R. W. Links are provided for emailing all three contacts at email addresses containing "abc.com." As of March 13, 2007, the source code for this website shows that the page was updated as recently as 2006. An ABC order form for choosing photo packages states at the bottom, "if you need a copy of a picture flyer please email us @ R.W.@ab.com or B.W.@abc.com."

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<sup>2</sup> Town Paper, December 24, 2003.  
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When confronted with this evidence, Mr. W. testified that there had been some talk of him working for ABC back in 2003, and he had left the state to attend training with ABC, but that he never actually did any significant amount of work for ABC or Ms. W. Mr. W. testified that he never earned any income from ABC, but on a loan application that he submitted to finance a vehicle, Mr. W. indicated that he had earned \$13,000 annually from “ABC” for a period of three years.

In 2006 Mr. W. had been working six to eight hours per week for Domino’s. Mr. W. testified that he has chosen not to work during the summers when he has custody of S. so that he can spend time with her. Mr. W. asserted that because he chooses not to work in the summer, Domino’s is not able to give him full-time work in the winter. Mr. W. testified that he could have picked up an extra day of work per week, but he declined the opportunity because he and his wife, who are expecting a child, are taking weekly birthing classes that last for one or two hours for each class. Because they are expecting a child, Mr. W. testified that in the future he does not intend to work at all.

Despite the limited earnings he claims, Mr. W. takes S. on vacations once or twice per year to places like Disney World or on Disney cruises. Mr. W. testified that some of the expenses for these vacations are paid for by his wife’s employer, but he and his wife pay for S.’s airfare. Mr. W. initially testified that the couple lives in a Valley home that they rent for \$1800 per month. Later on cross examination Mr. W. admitted that the couple, or at least Ms. W., owns property on X Street in Town assessed at \$90,000 and they have taken a building permit to build a new home with a valuation of \$312,524, although these are in Ms. W.’s name. Mr. W. claimed that he did not mention the lot and the house under construction because they are owned by his wife and he doesn’t really have anything to do with them. He did admit that he does plan to live there when the house is complete.

The contradictions in the evidence show that Mr. W. was not truthful in his testimony. It is more likely than not that he is earning income that he is not reporting to CSSD. It is also more likely than not that Mr. W. has engaged in a scheme of concealing his earnings and assets from CSSD and this tribunal. Had Mr. W. wished to disprove that he is employed by ABC or his wife and that he is earning this level of income, he could have joined CSSD in subpoenaing his wife to testify and provide business documents supporting his position. Mr. W. declined to do so.

The following findings of fact are hereby adopted in addition to the facts from the January 30, 2008, proposed decision:

In his proposed decision, Mr. W. had asked that this case be remanded because “I spoke with B. W. and she is willing to provide the courts her tax paperwork that was subpoenaed during this process.” On remand, Mr. W. submitted his and Ms. W.’s 2006 joint tax return and Ms. W.’s 2005 individual return.

In his proposal for action, Mr. W. wrote, “I was never offered to subpoena the testimony of B. W., so saying that I declined to subpoena her is not true. There was a hearing that I was on and B. was asked to talk during that call to testify and she declined. B. did not receive a subpoena to be on that call.”

Ms. W. had been subpoenaed by CSSD to appear before the administrative law judge to testify and answer questions. Her subpoena directed her to contact CSSD if she had any questions. In response, Ms. W. retained her own attorney to oppose the subpoena and avoid testifying. Mr. W. later had his own counsel, and there were ample opportunities for Ms. W. to testify, and for Mr. W. to compel her to if she refused.<sup>3</sup> On remand, Mr. W. was specifically afforded an opportunity to comment as to whether a further evidentiary hearing would be useful. Mr. W. submitted an unsworn letter, as did Ms. W., but he did not address the issue of further supplemental hearings and he did not request an opportunity to bring his wife into a hearing to explain and answer questions about the nature of her business and his role in it. At this time, there is thus no more information available about Mr. W.’s involvement in the business as at the time of previous proposed decision.<sup>4</sup>

Ms. W.’s 2005 return shows that for that year the business netted only \$15,798 on gross sales of \$346,344.<sup>5</sup> The 2006 joint return shows that Mr. W. earned \$2,514 from his job at Domino’s (Tallmage Corporation), and one of the W.’s earned \$3,718 from a company called Company A.<sup>6</sup> For 2006 the business netted \$64,825 on gross sales of \$289,153.

### **III. Discussion**

Based on the W.’s most recent tax return information, CSSD has calculated that Mr. W.’s child support obligation should be set at \$549 per month for one child. CSSD arrived at this

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<sup>3</sup> Mr. W.’s attorney has not responded to notices issued after the proposed decision. His office advised the OAH by telephone that he no longer represents Mr. W..

<sup>4</sup> Mr. W., Ms. W., and the custodian have each submitted unsworn letters. For the most part, these letters do not address the issues in this case, although both of the W. letters deny Mr. W.’s involvement in Ms. W.’s business. None of these letters rise to the level of admissible evidence under 2 AAC 64.290 that could be relied on in lieu of oral testimony subject to cross examination. The letters may be considered as argument to the extent they discuss the issues in the case.

<sup>5</sup> Exhibit 13, page 6.

<sup>6</sup> Exhibit 13, page 19.

figure based on the 2006 joint tax return. After adjusting accelerated depreciation to a straight line method, CSSD found the business income to be \$79,915.40. CSSD attributed half of this amount to Mr. W. as an equal partner, added the \$2,513.58 that Mr. W. earned delivering pizzas, added \$98.00 in interest income and \$1,106.96 for the value of a PFD, and concluded that Mr. W.'s gross income was \$43,676.24.<sup>7</sup> In their written responses, neither of the parties commented on this calculation. Mr. W. asserts, without further supporting evidence, that he derives no income from the business, and that his support obligation should be based only on his wage and PFD income, a result that would essentially excuse him from paying any child support except for a token minimum payment.

CSSD's calculation of Mr. W.'s income is well below the amount that Mr. W. had been earning at Cellular One back in 2003, and it does not take into account Mr. W.'s testimony that the business has recently been rapidly expanding. At this point, however, it does represent the best estimate available of Mr. W.'s income.

#### **IV. Conclusion**

CSSD has correctly calculated Mr. W.'s support obligation to be \$549 per month for one child at Exhibit 15. Support should be set accordingly.

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<sup>7</sup> Exhibit 15; CSSD's Second Submission to Record (April 14, 2008).  
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**V. Order**

IT IS HEREBY ORDERED that:

- Mr. W.'s support obligation is set at \$549 per month for one child, effective September 1, 2006.
- All other provisions of the existing child support order shall remain in effect.

DATED this 4<sup>th</sup> day of August, 2008.

By: Signed  
DALE WHITNEY  
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 6<sup>th</sup> day of August, 2008.

By: Signed  
Jerry Burnett  
Director, Administrative Services

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