

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

IN THE MATTER OF:)

H. T. L.)

) OAH No. 07-0035-CSS

) CSSD No. 001053810

DECISION AND ORDER

I. Introduction

This case involves the Obligor H. T. L.'s appeal of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 8, 2007. The Obligee child is C., DOB 00/00/84. After Mr. L. filed his appeal, CSSD submitted a Motion for Summary Adjudication, asserting there are no material issues of fact and requesting that its revised Administrative Child Support and Medical Support Order be affirmed.

The formal hearing was held on February 20, 2007. Mr. L. appeared by telephone; the Custodian of record, C. J. A., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded, but the digital recording was inadvertently lost, either by the administrative law judge or during a later server changeover performed by the Dept. of Administration. When the loss of the recording was discovered, a supplemental hearing was calendared and held on April 11, 2007. Mr. L. participated initially, but, not understanding the reason for the second hearing, he became angry and terminated his part of the telephone call. The hearing continued with Mr. Peltier appearing again for CSSD. The record closed on April 11, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on a review of the complete record in this case and after due deliberation, Mr. L.'s appeal is granted in part and denied in part, as discussed below. Also, CSSD's motion for summary adjudication is denied because material issues of fact exist in this case regarding Mr. L.'s income and any direct child support payments he may have made on C.'s behalf that must be resolved. CSSD does not object to the denial of summary adjudication and participated in both hearings in order to fully develop the facts in Mr. L.'s case.

II. Facts

A. History and Proceedings

On July 18, 1995, the Superior Court adjudicated Mr. L.'s paternity of the Oblige C.¹ On July 20, 1995, CSSD issued a Notice and Finding of Financial Responsibility that set Mr. L.'s child support at \$612 per month from February 1995 forward.² On March 28, 2006, Mr. L. submitted a Motion to Vacate Default Order.³ On January 8, 2007, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order.⁴ Ongoing child support was not at issue, as C. emancipated in 2002. The revised order set Mr. L.'s total arrears at \$53,557.38.⁵ Mr. L. appealed and requested a formal hearing on January 24, 2007.⁶

At the hearing, Mr. L. asserted: (1) he is unable to work because he is a fully disabled veteran as a result of wounds he received in the Vietnam War; (2) Ms. A. took C. to Washington State in 1988 and essentially abandoned the child when she was 13 years of age; (3) C. is now in prison in Washington after being convicted, along with her boyfriend, for attempted murder of her mother; (4) he has made direct child support payments by cash on behalf of C. and he has also deeded her most of his Native corporation stock so the earnings from them can help support her.

B. Findings of Fact

1. Mr. L. is an honorably discharged veteran of the United States Armed Forces and is currently compensated by the Department of Veterans Affairs for service-connected disabilities from the Vietnam War at the rate of 100%;⁷

2. Prior to being compensated at the 100% rate, Mr. L. received disability pay at the rate of 50%, which equaled \$566 per month in 1995⁸. His total income that year, including Native corporation dividends and the PFD, was \$9591.16, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$160 per month;⁹

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exhs. 6 & 7.

⁵ Exh. 6 at pg. 1.

⁶ Exh. 8.

⁷ Exh. 5 at pg. 1.

⁸ Exh. 11 at pg. 22.

⁹ Exh. 12 at pg. 1.

3. In 1996, Mr. L. received disability pay of \$579 per month.¹⁰ His total income that year, including Native corporation dividends and the PFD, was \$8410.68, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$140 per month;¹¹

4. In 1997, Mr. L. received disability pay of \$596 per month from January through June 1997¹²; in July 1997, he began receiving 100% disability pay in the amount of \$2001 per month.¹³ His total income that year, including Native corporation dividends and the PFD, was \$17,228.66, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$287 per month;¹⁴

5. In 1998, Mr. L. received disability pay of \$2042 per month.¹⁵ His total income that year, including Native corporation dividends and the PFD, was \$26,400.88, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$440 per month;¹⁶

6. In 1999, Mr. L. received disability pay of \$2068 per month.¹⁷ His total income that year, including Native corporation dividends and the PFD, was \$27,448.36, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$457 per month;¹⁸

7. In 2000, Mr. L. received disability pay of \$2116 per month.¹⁹ His total income that year, including Native corporation dividends and the PFD, was \$27,471.06, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$458 per month;²⁰

8. In 2001, Mr. L. received disability pay of \$2189 per month.²¹ His total income that year, including Native corporation dividends and the PFD, was \$28,215.00, which results in a child support amount calculated pursuant to Civil Rule 90.3 of \$470 per month;²²

¹⁰ Exh. 11 at pg. 21.

¹¹ See Attachment A.

¹² Exh. 11 at pg. 20.

¹³ Exh. 11 at pg. 20.

¹⁴ See Attachment B.

¹⁵ Exh. 11 at pg. 19.

¹⁶ Exh. 12 at pg. 6.

¹⁷ Exh. 11 at pg. 18.

¹⁸ Exh. 12 at pg. 7.

¹⁹ Exh. 11 at pg. 17.

²⁰ Exh. 12 at pg. 8.

²¹ Exh. 11 at pg. 16.

²² Exh. 12 at pg. 9.

9. In 2002, Mr. L. received disability pay of \$2247 per month.²³ His total income that year, including Native corporation dividends and the PFD, was \$28,516.04, which results in a child support amount of \$475 per month;²⁴

10. The Obligee C. reached the age of emancipation on March 28, 2002, so Mr. L.'s monthly obligation ended that month;

11. Mr. L. gifted 38 shares of Shee Atika stock to C. on July 17, 1991, in order to contribute to her support;²⁵ C. would have received approximately \$3331 in Shee Atika dividends from February 1995 through March 2002;²⁶

12. Mr. L. gifted 32 shares of Sealaska stock to C. on February 2, 1993, in order to contribute to her support;²⁷ C. would have received approximately \$4118.60 in Sealaska dividends from February 1995 through March 2002;²⁸

13. Mr. L. made a direct cash payment of \$5000 on C.'s behalf in July 1997.²⁹

III. Discussion

A. Income

A parent is obligated both by statute and at common law to support his or her children.³⁰ 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." Under Alaska law, the phrase "total income from all sources" includes disability payments paid to a parent from the Veterans Administration.³¹

Mr. L. asserts he is not liable for child support in this case because he is unable to work as a result of wounds he received in the Vietnam War. While it is true that Mr. L. performed a valuable service for this country, and he is now a fully disabled veteran, he is still liable for supporting his child C. during her minority. His obligation must be determined according to Alaska's Civil Rule 90.3, which is the law that stipulates the method of calculating an obligor

²³ Exh. 11 at pg. 15.

²⁴ Exh. 12 at pg. 10.

²⁵ Exh. 5 at pg. 20.

²⁶ Exh. 11 at pg. 1.

²⁷ Exh. 9.

²⁸ Exh. 11 at pg. 2.

²⁹ Hearing testimony of Mr. L.

³⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

³¹ Civil Rule 90.3, Commentary III.A.25-26.

parent's support amounts. The specific facts and figures are set out in the section above labeled Findings of Fact and this section of the discussion explains those numbers.

Mr. L. has not always received disability pay at the rate of 100%; in the years 1995 through mid-1997, he was compensated at the rate of only 50%, so there are two new calculations attached to this decision. Attachment A reflects the new calculation based on his 50% disability pay for all of 1996. Attachment B reflects the new calculation for 1997, but the figures for this year are based on him receiving 50% disability pay for the first half of the year and 100% for the second half of the year. The total income for that year was determined and a child support amount calculated from that total income figure.

B. Credit for Direct Payments

CSSD may give the obligor credit for direct payments made “before the time the obligor is ordered to make payments through the agency.”³² Credit is generally not given for gifts made to the child(ren) by the obligor.³³

Mr. L. is requesting credit for a \$5,000 cash payment he sent to C. in 1997 and because CSSD does not object to the credit, his request will be granted. Mr. L. is also requesting credit for giving C. 38 shares of Shee Atika Native corporation stock and 32 shares of Sealaska stock in 1991 and 1993, respectively. He claims C. has been able to benefit from the dividends over the years and she has needed the money because her mother essentially abandoned her when C. was in her early teens. CSSD is opposed to the credit and argues the shares constituted a gift that should not be allowed as the basis for a direct credit.

As stated above in the Findings of Fact, C. has benefited in the approximate amount of \$7449.60 since 1995 as a result of receiving ownership of the Shee Atika and Sealaska Native corporation shares from her father. Mr. L. testified he gave her the shares because they were essentially all he had and he wanted to help support her in any way he could.

Mr. L. should be given credit for the \$7449.60 in dividends C. has received from the Shee Atika and Sealaska stock. This is an unusual step, but it is warranted in this case because of the particular set of facts presented here. While gifts are generally not allowed as direct credits, these gifts were not in the same category as winter coats and mittens. These are income-generating assets that have produced a dividend benefit to C. that is easily determined, and that

³² AS 25.27.020(b).

³³ *CSSD v. Campbell*, 931 P.2d 416 (Alaska 1997).

Mr. L. has foregone. Just because Mr. L. has a debt to reimburse the state of Washington for public funds paid on C.'s behalf doesn't mean all of his other attempts to support her should go unacknowledged or disallowed. Mr. L. is entitled to the credit.

IV. Conclusion

The person who filed the appeal, in this case, Mr. L., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.³⁴

Mr. L. has partially met that burden and as a result, his child support calculation should be adjusted for 1995-1997 as discussed above. Also, he should be given credit for a \$5000 direct cash payment he made on C.'s behalf and for the \$7449.60 in dividends she has received from the income-producing Native corporation stock he gave her.

V. Child Support Order

1. Mr. L. is liable for child support in the amount of \$160 per month for the period from February 1995 through December 1995; \$140 per month for 1996; \$287 per month for 1997; \$440 per month for 1998; \$457 per month for 1999; \$458 per month for 2000; \$470 per month for 2001; and \$475 per month for January 2002 through March 2002.

2. Mr. L. is entitled to a credit in the amount of \$5000 for a direct payment he made in July 1997;

3. Mr. L. is entitled to a credit in the amount of \$7449.60 that reflects the total amount of dividends paid to C. during 1995 -- 2002 from the Native corporation stocks he gave her; CSSD may apportion the credit on a monthly or yearly basis during the period from February 1995 through March 2002.

DATED this 15th day of May, 2007.

By: Signed _____
Kay L. Howard
Administrative Law Judge

³⁴ 15 AAC 05.030(h).

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 4th day of June, 2007.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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