

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

In the Matter of)
)
T J) OAH No. 18-1257-CSS
) Agency No. 001202238
_____)

DECISION AND ORDER

I. Introduction

T J appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 1, 2018. The order reduced his child support obligation for his sons, M and M, to \$354 per month based on equal shared custody with the boys’ mother, N X.

Through the evidence produced in the hearing process, Mr. J showed that he is entitled to deductions that were not included in the original calculation. Under the shared custody formula, after all applicable deductions, the parents’ incomes and reciprocal child support obligations result in a support amount of \$286 per month for two children (\$212 for one child), owed by Mr. J. The Modified Administrative Child Support and Medical Support Order issued on November 1, 2018 is adjusted to reflect these amounts, effective September 1, 2018 and ongoing.

II. Facts and Proceedings

T J and N X are the parents of M, age 11, and M, age 9. Both parents live in No Name.

A. Procedural History

In 2015, CSSD set Mr. J’s child support obligation for the two boys at \$860 per month based on equal shared custody.¹ Ms. X requested a modification review, and CSSD sent each parent notice of the petition on August 15, 2018.² Both parents provided recent paystubs showing their income.³

On November 1, 2018, CSSD granted the modification and issued the Modified Child Support Order that is the subject of this appeal. Based on the income information each parent provided and their 50/50 custody practice, the order set Mr. J’s obligation at \$354 per month (\$262 for one child), effective September 1, 2018 and ongoing.⁴ Mr. J appealed, arguing that the calculation overlooked deductions for which he is eligible. He also argued it should have

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 4.

included potential income for Ms. X.⁵

The formal hearing took place on January 7, 2019. It was audio-recorded. Mr. J appeared in person and represented himself, with assistance from W J. Ms. X appeared telephonically and represented herself. Child Support Specialist Brandi Estes appeared in person and represented CSSD, with assistance from Patrick Kase. All submitted documents were admitted to the record, which closed following the hearing.

B. Relevant Factual Background

Mr. J works full-time in Anchorage for a firm that does contract work for oil field operator, Employer A. He earns \$26.50 per hour.⁶ This results in gross annual wages of \$55,120.⁷ He receives the PFD. Mr. J pays \$318 each month into a 401k retirement savings plan.⁸ He pays \$238.74 per month in health insurance premiums for his own health coverage.⁹ He also pays \$100 per month in work-related childcare expenses for M and M.¹⁰

Until December 21, 2018, Ms. X worked as an assistant at a chiropractic office, where she earned \$15 per hour and typically worked about 30 hours per week. When she started the job, her employer's office was only open four days each week. Starting sometime in August or September 2018, the office expanded and began offering services five days a week, but it did not always offer Ms. X full-time hours. Ms. X sometimes worked forty-hour weeks, and she sometimes worked between thirty and forty hours, depending on the office's needs and her own preferences.

Ms. X left this job on December 21, 2018 by mutual agreement with her employer. She is currently unemployed and looking for a new part-time job. There is no medical or physical reason Ms. X cannot work a full-time job. Her plan is to find part-time work while she explores whether to enroll in a hairdressing program this spring. Ms. X is looking at positions with employers like Employer B and Employer C, and she expects she will earn about \$12 per hour when she is re-employed.

If Ms. X enrolls in a hairdressing certification program in the spring, she estimates the course would require ten months of training on a full-time basis, or 1.5 years if she attends part-

⁵ Exhibit 5.

⁶ Exhibit 3; Exhibit 5, p. 8.

⁷ \$26.50/hour x 40 hours/week x 52 weeks = \$55,120. The modified support order was based on this income figure. See Exhibit 4, pp. 6, 9. The footnote at Exhibit 4, p. 9 incorrectly states that the hourly wage is \$25.

⁸ Exhibits, 3, 5 (\$159 each bi-weekly pay period).

⁹ Exhibits 3, 5 (\$28.79 + \$90.58 = \$119.37 each bi-weekly pay period).

¹⁰ J testimony; J Exhibit D (Boys and Girls Club billing summary).

time and works part-time. She has heard that experienced hairdressers can earn between \$2,000 and \$5,000 per month. However, she does not expect to earn that much for at least her first several years of practice. At present, she is less focused on this work for its financial promise and more interested in the flexible work schedule and scheduling control it would offer.

III. Discussion

As the person who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child and Medical Support Order dated November 1, 2018 requires adjustment.¹¹ He met this burden.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹² If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established. Mr. J’s former obligation was \$860 per month, so a change of \$129 or more per month satisfies this standard.¹³

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.¹⁴ Here, CSSD provided notice in August 2018. Therefore, the modified support order is effective as of September 1, 2018.

Under Civil Rule 90.3, a parent’s child support obligation is calculated based on his or her total income from all sources during the period for which the support is being paid.¹⁵ By its nature, this determination can be a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.¹⁶ Once a parent’s total income from all sources is determined, Civil Rule 90.3 requires a determination of his or her adjusted annual income. This is calculated by subtracting certain deductions from the total income figure. Mandatory deductions address matters such as federal income taxes, Social Security/Medicare withholding, and mandatory contributions to a retirement plan (up to a maximum deduction of 7.5% of the parent’s gross wages or self-employment income).¹⁷ Deductions are also available for voluntary contributions to a retirement plan (up to the same maximum), work-related childcare expenses for the children who are the subject of the support order, and a parent’s cost

¹¹ 15 AAC 05.030(h).

¹² AS 25.27.190(e).

¹³ \$860 x 15% = \$129.

¹⁴ 15 AAC 125.321(d).

¹⁵ *See also* 15 AAC 125.020, 15 AAC 125.030.

¹⁶ Civil Rule 90.3, Commentary III.E.

¹⁷ Civil Rule 90.3(a)(1)(A).

of health insurance premiums for covering himself or herself only (up to a maximum deduction of 10% of the parent's gross wages and self-employment income).¹⁸

When parents exercise shared custody, each parent's child support obligation is first determined under the primary custody formula based on the income figures and allowable deductions for that parent. The reciprocal primary custody obligations are then used in the shared custody formula.¹⁹ In general and depending on the percentage of time each parent exercises overnight custody, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario.

A. Mr. J's obligation under the primary custody formula

The evidence supports CSSD's determination of Mr. J's 2018 total income from wages and the PFD. Mr. J showed that he is entitled to deductions for his retirement contributions, work-related childcare expenses, and cost of providing for his own health insurance coverage. The initial calculation included his retirement plan contributions, but not the other two deductions. When all applicable deductions are included, his income results in a child support obligation of \$869 for two children (\$644 for one child).²⁰

B. Ms. X's obligation under the primary custody formula

CSSD calculated Ms. X's 2018 gross wages at \$23,400 based on her \$15 hourly wage and an average 30-hour weekly work schedule.²¹ This determination is reasonable and likely reflects Ms. X's actual 2018 wage income, given her varying work schedule. Ms. X also receives the PFD.

Ms. X argued that she lost her job in mid-December and is not currently employed, so this calculation overstates her actual income. She did not present documented evidence showing her 2018 income. Regardless, to the extent she worked less than an average 30-hour week, she likely was voluntarily and unreasonably underemployed as a result of her own lifestyle choices, rather than any economic forces. This income therefore would be imputed as her potential income.

Mr. J argues that Ms. X was voluntarily and unreasonably underemployed when she worked 30 hours per week, and the child support calculation should be based on \$15 per hour and a full-time schedule. However, the totality of the evidence supports CSSD's reliance on an

¹⁸ Civil Rule 90.3(a)(1)(B)-(F).

¹⁹ Civil Rule 90.3(b)(1); *see also* Attachments B, C.

²⁰ Attachment A.

²¹ Exhibit 4, p. 8.

average 30-hour work week. For most of 2018, Ms. X's employer only offered a four-day work schedule. Further, her schedule often varied to accommodate her employer's needs, even after the employer expanded its hours of operation. Though Ms. X sometimes voluntarily worked fewer than 40 hours per week after the office expanded, there is insufficient evidence showing the extent of this practice or its unreasonable nature. No additional income should be imputed to Ms. X.

Ms. X's recent job loss is considered a temporary situation. Parents going through temporary periods of unemployment generally can be expected to maintain their child support obligations.²² Though the resulting decrease in income undoubtedly creates budgetary pressures, Ms. X's prospects for new employment are promising. If she does not find new work despite active search efforts, she may seek another modification review. However, the child support calculation should not be revised until she has secured employment and is earning a consistent income figure.

If Ms. X decides to return to school in the spring, it could adversely impact her ability to earn the wage income adopted by this decision. However, she did not show that her possible return to school should result in a reduction of her expected income. A voluntary income reduction does not necessarily result in a corresponding change to the child support calculation.²³ On one hand, the law recognizes that an obligor-parent should not be locked into a particular job or field while his or her children are minors. On the other hand, the children of the marriage and the other parent should not be forced to finance the parent's career change. Thus, the tribunal is to consider the nature of the change and reasons for the change, as well as the extent to which the children will ultimately benefit from it.²⁴

As far as the children are concerned, the primary benefit of Ms. X's potential career change is its scheduling flexibility. However, even accepting this as true, this benefit is more than offset by the financial trade-off Ms. X described. She expects her hairdressing income would fall below her recent earnings, potentially for several years. While there is a possibility she would someday earn substantially more as a hairdresser than she did as an administrative assistant, this is highly uncertain.²⁵ Therefore, this decision does not allow an income reduction

²² *Patch v. Patch*, 760 P.2d 526, 529–30 (Alaska 1988).

²³ *See Olmstead v. Ziegler*, 42 P.3d 1102 (Alaska 2002); *Vokacek v. Vokacek*, 933 P.2d 544 (Alaska 1997); *Pattee v. Pattee*, 744 P.2d 658 (Alaska 1987).

²⁴ *Olmstead*, 42 P.3d at 1105; *Vokacek*, 933 P.2d at 549.

²⁵ According to Occupational Employment Statistics published by the Bureau of Labor Statistics, the mean hourly wage for hairdressers in Alaska is \$14.66. Kase testimony.

based on Ms. X's potential upcoming school enrollment and career change.

The best available evidence is that Ms. X earned gross 2018 wages of \$23,400, plus the PFD, as CSSD determined. This results in a support amount of \$488 per month for two children (\$362 for one child) under the primary custody formula.²⁶

C. Shared Custody Calculation

Under the shared custody formula and the parties' 50/50 custody arrangement, the parents' reciprocal support obligations result in a support amount of \$212 per month for one child and \$286 per month for two children, owed by Mr. J.²⁷ These calculations are supported by the evidence and should be adopted, effective September 1, 2018.

IV. Conclusion

Under the parties' equal shared custody agreement, their income differences result in a \$286 monthly support obligation for two children (\$212 for one child), owed by Mr. J. This amount is effective September 1, 2018 and ongoing. It was calculated under Civil Rule 90.3(b)(1) without variation.

V. Child Support Order

- Mr. J's support amount for M and M is adjusted to \$286 per month (\$212 for one child), effective September 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated November 1, 2018 remain in full force and effect.

DATED: January 22, 2019.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

²⁶ Exhibit 4, p. 8.

²⁷ Attachments B, C.

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 7th day of February, 2019.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

