

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

In the Matter of)	
)	
U Z)	OAH No. 19-0344-CSS
_____)	Agency No. 01106822

DECISION AND ORDER

I. Introduction

K Z, the custodial parent of B M and Q M, appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 14, 2019. The modification decreased U Z’s child support obligation for his children B and Q from \$559 per month to \$436 per month.

The evidence and testimony at the formal hearing held in this case on May 9, 2019 showed that the monthly support obligation calculated in the March 14, 2019 modified order was based on an income estimate of full-time work at minimum wage plus the Alaska Permanent Fund Dividend (PFD). Ms. Z objected to this speculative computation of Mr. Z’s income, arguing that he previously had worked as an appliance repairman and was able to earn far more than minimum wage.

Ms. Z did not prove by a preponderance of the evidence that the Modified Administrative Child and Medical Support Order dated March 14, 2019 incorrectly estimated Mr. Z’s potential income. However, the order mistakenly included the PFD, which Mr. Z does not receive as he relocated to Indiana several years ago. Therefore, the order is adjusted accordingly to reflect the deletion of this additional income, resulting in a total gross annual income of \$19,362.96, an adjusted annual income of \$17,068.56, and an ultimate child support obligation of \$384 per month for B and Q.

II. Facts

A. Material Facts¹

U Z and K Z are the parents of B and Q M, ages 18 and 8, respectively. Ms. Z lives in City A with the two children, and Mr. Z relocated to Indiana in 2015 or 2016. When Mr. Z was living in City A he worked at Business A loading and unloading vehicles. It is

¹ All the facts in this decision are based on the documents admitted into the record and the testimony of Ms. Z at the May 9, 2019 hearing.

unclear the time frame he worked there or what he was compensated per hour. He also worked for Business B driving around the City A area in his own truck and repairing machines. Again, the dates of his employment with Business B are unclear. He was making between \$20 and \$30 an hour but was fired after about six months. Mr. Z has been incarcerated multiple times in his life and on at least one occasion he was taking classes in jail; it is unclear if the courses related to general academic studies or a particular trade. Mr. Z has no permits, licenses or degrees that the Division was able to locate through any searchable means.

B. Procedural History

On October 6, 2011 CSSD issued an Administrative Child Support and Medical Support Order setting Mr. Z's monthly child support obligation at \$559 per month for B and Q.² This calculation was based on Ms. Z having primary custody and extrapolating Mr. Z's reported second quarter earnings to an annual amount. This resulted in a gross income of \$29,214.20. After applicable deductions his adjusted annual income was \$24,839.48.

At Ms. Z's request CSSD initiated a modification review on November 30, 2018 and served the parties with an administrative order to provide financial and medical insurance information.³ No information was provided by Mr. Z.⁴ The Division issued a Decision on the request for the modification setting his monthly child support obligation at \$436 per month for both children beginning on December 1, 2018.⁵ This calculation was based on Ms. Z having primary custody and estimating Mr. Z's presumed earning potential by basing his income on a full time job in Alaska that paid minimum wage and including an Alaska Permanent Fund dividend in the amount of \$1600.⁶ This resulted in a gross income of \$22,067.25 and an adjusted annual income of \$19,358.37 after deductions for matters including federal income tax and social security.⁷

The March 14, 2019 Order setting Mr. Z's monthly child support at \$436 for two children is the subject of this appeal. Ms. Z disputes the gross income figure on which

² Exhibit 1.
³ Exhibit 3.
⁴ Prehearing brief from the Division.
⁵ Exhibit 4.
⁶ Exhibit 4.
⁷ Exhibit 4.

CSSD relied, asserting that Mr. Z is capable of a far higher earning potential based on his prior experiences and training as an appliance repairman.

A formal hearing was held on May 9, 2019. Ms. Z appeared telephonically and testified on her behalf. The Division was represented by Child Support Specialist Patrick Kase. Mr. Z was unable to be reached at the number of record; the call went directly to voicemail, which was full. A certified mail receipt showed that a notice regarding the hearing was sent to his last reported address. However, an individual named “M K” signed for the letter according to the postal tracking postcard. Both CSSD and Ms. Z reported not knowing Mr. Z’s whereabouts, nor have either had any recent contact with him. He has fallen many years behind in child support payments. Given the longstanding history of Mr. Z’s lack of engagement with CSSD and the financial support of his children, there was no indication that continuing the hearing to allow for his participation was an appropriate use of time or resources. Therefore, the hearing proceeded as scheduled.

All previously submitted documents were admitted into the record. After the hearing Mr. Kase submitted two additional support calculations; one based on an average of the last three years of Mr. Z’s reported annual earnings according to the Department of Labor, and one based on the average salary of a home appliance repairperson working in Indiana with state taxes deducted.⁸ No other documents were submitted. The record closed on May 23, 2019.

III. Discussion

As the person who filed the appeal, Ms. Z has the burden of proving by a preponderance of the evidence that the Modified Administrative Child and Medical Support Order dated March 14, 2019 is incorrect.⁹ For the reasons discussed below, she did not meet that burden.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ 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. Z’s former obligation was \$559 per month, so a

⁸ Exhibits 9 and 10.

⁹ 15 AAC 05.030(h).

¹⁰ AS 25.27.190(e).

change of \$83.85 or more per month satisfies this standard.¹¹ Even when there is not a 15% change, however, CSSD may modify a support order if three or more years have elapsed since the order was issued or last modified.¹²

Here, both conditions are met. Mr. Z's 2019 modified child support obligation is calculated to be \$436, which is a difference of \$123. Additionally, Mr. Z's support obligation was last reviewed in 2011, so the modification is also justified by the passage of time.

A modification is effective beginning the month after the parties are served with notice of the request for a modification review.¹³ Here, CSSD provided notice in November of 2018. Therefore, the modification is effective as of December 1, 2018.

A. Child Support Overview

Under Civil Rule 90.3, a parent's child support obligation is to be calculated based on the parent's total income from all sources during the period for which the support is being paid.¹⁴ For past time periods, this calculation can be done based on actual income. For the current year and ongoing obligation, this determination is necessarily a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.¹⁵ If the parties' financial situations significantly differ from the expectations on which this decision is based, either party may request a modification review.

In primary custody cases, the non-custodial parent's support obligation for two children is 27% of that parent's adjusted annual income.¹⁶ Adjusted annual income is calculated by determining total income from all sources, and then subtracting specified allowable deductions, such as income taxes, Social Security taxes, and mandatory or voluntary contributions to a retirement or pension plan.¹⁷

¹¹ \$559 x 15% = \$83.85.

¹² 15 AAC 125.321(b)(2)(C).

¹³ 15 AAC 125.321(d).

¹⁴ Civil Rule 90.3(a)(1). *See also* 15 AAC 125.020, 15 AAC 125.030.

¹⁵ Civil Rule 90.3, Commentary III.E.

¹⁶ Civil Rule 90.3(a)(2).

¹⁷ Civil Rule 90.3(a)(1).

B. Child Support Calculation

1. 2011 support amount

In March of 2011 CSSD received an application from Ms. Z for support services for B and Q M.¹⁸ A monthly child support obligation for Mr. Z was initially calculated to be \$414 for one child, B. However, when Q was born in June of 2011 a recalculation was done to include both children the monthly obligation increased to \$559 per month as set forth in the support order dated October of 2011.¹⁹ Although the Division solicited medical and financial information from both parents prior to calculating the final monthly payment, Mr. Z did not submit actual income or employment information. Therefore, CSSD relied on the two quarters of reported income they had for Mr. Z and extrapolated an annual gross income of \$29,214.20.²⁰ After appropriate deductions his adjusted annual income was \$24,839.48. CSSD correctly multiplied this sum by 27% under the Civil Rule 90.3(a) primary custody calculation resulting in a monthly child support obligation of \$559 beginning November 1, 2011.

2. 2019 support amount

In November of 2018 Ms. Z requested a modification review of the October 2011 support order. CSSD complied, and reevaluated Mr. Z's support potential in the absence of any information provided by him, or any wages reported by the Department of Labor. The Division based their assessment on the projected income of a person working 40 hours a week in Alaska and making minimum wage, then adding in the Permanent Fund Dividend (PFD) in an amount of \$1600. The result is a gross income of \$22,067.25 and an adjusted annual income of \$19,358.37. CSSD erred in including the PFD, as Mr. Z left the state of Alaska several years ago.

C. Voluntary and unreasonable unemployment and underemployment

A parent's duty to support his or her children takes priority over other debts, obligations and lifestyle decisions.²¹ Civil Rule 90.3 allows a court to calculate an obligor parent's child support obligation based on potential income, rather than actual income, if the parent is

¹⁸ Exhibit 1.

¹⁹ Exhibit 1.

²⁰ Exhibit 1.

²¹ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

voluntarily and unreasonably unemployed or underemployed.²² A person's potential income can be estimated by evaluating factors such as work history, qualifications, skills, education, specialized training and job opportunities."²³ Whether a parent is voluntarily and unreasonably underemployed is a question of fact, and its resolution depends on the nature of the changes and the reasons for the changes.²⁴ Therefore, the totality of the circumstances must be evaluated when deciding whether to impute income to a party based on voluntary unemployment."²⁵

In the present case Mr. Z worked as an appliance repairman at some point before he relocated to Indiana in 2015 or 2016. However, his hourly wage and hours per week is unknown. Additionally, he was fired after just six months, which indicates he was not fulfilling the expectations of the position. He received some education while incarcerated, but it is uncertain, when, for how long, and if the classes were regarding a specific skill or trade. Apart from two quarters of earnings in 2011 there have been no wages reported to the Department of Labor for Mr. Z. He has no traceable degrees or licenses.

Given the scant information about Mr. Z's current skills, abilities, job opportunities, and work history it is not reasonable to conclude that he is necessarily voluntarily underemployed or unemployed. He could conceivably be holding well compensated positions in Indiana as a repairman for unreported income. But absent any definitive evidence of his actually securing such work, including work receipts, affidavits from people paying him illicitly, or copies of certifications or licenses, this assumption is far too speculative.

Instead, the facts that have been established regarding Mr. Z's earning potential is that he is physically capable of performing manual labor and driving a vehicle. He has been able to maintain jobs in the past for at least several months. He has continued his schooling by taking classes while incarcerated. Therefore, it is a reasonable assumption that he has the mental and physical aptitude to maintain a minimum wage position working 40 hours a week, 52 weeks a year. This is the conclusion the CSSD reached as well, as Mr. Kase noted during the hearing that

²² Civil Rule 90.3, Commentary III.C.

²³ Civil Rule 90.3(a)(4).

²⁴ *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002) (quoting *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997)).

²⁵ Civil Rule 90.3, Commentary III.C.

CSSD was hesitant to rely on the Department of Labor statistics for Mr. Z dating back 7 and 8 years.

Ms. Z is in the understandably frustrating and difficult situation of trying to raise two children without the benefit of Mr. Z's legally mandated child support payments. If more information about Mr. Z's situation or whereabouts becomes available, she is encouraged to provide it to CSSD, along with another request for a modification if appropriate.

IV. Conclusion

Ms. Z did not prove by a preponderance of the evidence that the Modified Administrative Child and Medical Support Order dated March 14, 2019 incorrectly estimated Mr. Z's potential income. However, the order mistakenly included the PFD, which Mr. Z does not receive as he relocated to Indiana several years ago. Therefore, the order is adjusted accordingly to reflect the deletion of this additional income, resulting in a total gross annual income of \$19,362.96, an adjusted annual income of \$17,068.56, and an ultimate child support obligation of \$384 per month for B and Q.

V. Child Support Order

1. U Z is liable for child support in the amount of \$384 per month for two children, B and Q M, effective March 14, 2019 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated March 14, 2019 remain in full force and effect.

Dated: May 24, 2019

Signed _____
Danika Swanson
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 21st day of June, 2019.

By: Signed
Signature
Danika Swanson
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.]