

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

In the Matter of )  
 )  
L T ) OAH No. 19-0636-CSS  
 ) Agency No. 001188970  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

L T appeals a Modified Administrative Child Support Order that the Child Support Services Division (CSSD/Division) issued on May 23, 2019. The order reduced Mr. T’s monthly child support obligation for his daughter F from \$254, as established in 2013, to \$205. Mr. T has appointed his mother power of attorney to handle all affairs involving this matter, and it is through her, M C, that he asserts the Division miscalculated his support obligation as he is a full-time graduate student. He argues that he cannot currently hold even a part time position as he is very busy in school, and is recovering from back surgery that restricts his lifting ability and makes sitting for prolonged periods difficult.

Through the evidence produced in the hearing process, Mr. T did not meet his burden of proof of demonstrating that it is more likely than not that his support obligation should be reduced due to his temporary physical restrictions and his responsibilities as a student. However, the support order in dispute was calculated based on his presumably holding a part-time job at an Alaskan minimum wage of \$9.89 per hour. Mr. T is currently living in State A, where the minimum wage is currently \$12 per hour, and his projected income should be based on a part time job where he is residing. Additionally, he is capable of working 25 hours a week, as opposed to the proposed 20. Therefore, after applicable deductions and inclusion of the Permanent Fund Dividend (PFD), for which he is still eligible, Mr. T’s projected adjusted annual income results in a support amount of \$3,077.83 annually, or \$256 per month for one child as appropriately calculated under Civil Rule 90.3.

Every parent has a duty to support his or her child.<sup>1</sup> The Modified Administrative Child Support and Medical Support Order dated May 23, 2019 is adjusted to reflect Mr. T’s obligation, effective May 1, 2019 and ongoing.

---

<sup>1</sup> Civil Rule 90.3 Commentary I.B., *The Nature of Child Support*.

## II. Facts

### A. *Material Facts*<sup>2</sup>

L T and K J are the biological parents of F T, who is six years old. Ms. J is the custodial parent, and she and F presumably live in City A, as this is their address as provided in the record. Ms. J did not participate in the hearing, but Mr. T testified that she is currently working at a temporary position and is also raising another child with a different father.

Mr. T is currently enrolled in the Ph.D Clinical Psychology program at City B University in State A. He did not think there is a current custody order issued by the Superior court as he has never initiated filing for custody or for a visitation schedule with F.

### B. *Procedural History*

The Division received an application for child support services from Ms. J in December of 2012.<sup>3</sup> The Division solicited income information from both parties; Mr. T did not submit any responsive documents. Therefore, in April of 2013 the Division issued an Administrative Child Support Order setting his monthly obligation for one child at \$254 based on a projected 2013 income from a full-time job paying Alaskan minimum wage, augmented by the Permanent Fund Dividend and reduced by appropriate deductions.<sup>4</sup>

In April of 2019 the Division received a written application from Mr. T for a modification review.<sup>5</sup> The Division solicited income information from both parties and Mr. T submitted a single page from his 2018 income tax return and a 2018-2019 school transcript of his courses for the fall, winter and spring quarters.<sup>6</sup> In May of 2019 the Division issued a Modified Administrative Child Support Order reducing Mr. T's monthly child support obligation to \$204.<sup>7</sup> This calculation was based on a projected 2019 income from a part-time job paying Alaskan minimum wage.<sup>8</sup>

Mr. T appealed this decision through his mom, Ms. C, in July of 2019.<sup>9</sup>

---

<sup>2</sup> The material facts are based on testimony presented at the hearing by Mr. T and his mother, as well as information submitted into the record.

<sup>3</sup> Ex. 1.

<sup>4</sup> *Id.*

<sup>5</sup> Ex. 2.

<sup>6</sup> Ex. 4.

<sup>7</sup> Ex. 2.

<sup>8</sup> Ex. 5.

<sup>9</sup> Ex. 6.

A formal hearing was held in this case on Tuesday, August 6, 2019. Mr. T participated and represented himself, as did Ms. C, as he has given her power of attorney regarding this child support matter. Ms. J was contacted at her number on record but was unable to be reached. A message was left on her voicemail instructing her to call the Office of Administrative Hearings to participate in the hearing. She did not return the call. The Division was represented by Child Support Specialist Patrick Kase. At the close of the hearing no party asked to submit additional information, nor was any solicited. The record closed on August 6, 2019.

### **III. Discussion**

#### *A. Child support modification under Civil Rule 90.3(a)*

In a child support matter, the person who files the appeal has the burden of proving that the Division's order is incorrect.<sup>10</sup> Ms. C filed this appeal on Mr. T's behalf, so he must prove by a preponderance of the evidence that the decision issued on May 23, 2019 regarding the Modified Administrative Child Support Order represents a miscalculation of his obligation. While the written appeal was unclear regarding his specific disagreement with the Division's order, at the formal hearing Mr. T clarified that he felt the calculation did not account for his being a full-time student recovering from back surgery and thus unable to work.

A parent is obligated both by statute and at common law to support his or her children.<sup>11</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 minus mandatory deductions such as federal income taxes, and Social Security/Medicare withholdings.<sup>12</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>13</sup> 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. T's child support obligation was previously set at \$254, so a support calculation that changes his support responsibility \$38.10 or more would be sufficient to modify his

---

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>12</sup> Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

<sup>13</sup> AS 25.27.190(e).

child support obligation.<sup>14</sup> When the newly calculated amount is less than a 15% change, CSSD still may grant the modification if three or more years have elapsed since the prior support order was issued.<sup>15</sup> Both conditions are met in the present case. Mr. T's current support obligation represents a decrease of \$50 from the original calculation, and the prior support order was issued in 2013, so a modification consideration is appropriate.<sup>16</sup>

*B. Mr. T's support obligation as the non-custodial parent under the primary custody formula*

In April of 2019 Mr. T requested a modification review of the April 2013 support order. The Division complied and prepared to reevaluate Mr. T's projected income from all sources by soliciting information regarding his current wages.<sup>17</sup> Mr. T responded by providing a single page of his tax return and a school transcript.<sup>18</sup> As Mr. T was enrolled in school, but did not submit any documentation stating that he had a medical condition or disability that did not allow him to work, the Division imputed to him the income from a job of 20 hours a week that paid Alaska minimum wage (\$9.89/hour).<sup>19</sup> This resulted in a annual wages of \$10,285.60 augmented by a PFD in the amount of \$2,928, resulting in a total gross income of \$13,213.60.<sup>20</sup> The Division deducted payments of Social Security, Medicare and Unemployment Insurance, resulting in an adjusted annual income of \$12,231.40.<sup>21</sup> This was then multiplied by 20%, the requisite rate for the calculation of the non-custodial parent's support for one child.<sup>22</sup> Under this calculation, Mr. T's monthly child support obligation came to \$204 for one child.<sup>23</sup>

*C. Voluntary and unreasonable unemployment*

Under Civil Rule 90.3, support obligations are to be set based on total income from all sources. However, when a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support obligation may be calculated by

---

<sup>14</sup> \$235 x 15% = \$35.25.

<sup>15</sup> 15 AAC 125.321(b)(2)(C).

<sup>16</sup> Mr. T's prior obligation was set at \$254 in 2013, while the 2019 calculation sets his obligation at \$204; \$254 - \$203 = \$50.

<sup>17</sup> 15 AAC 125.050(d)(1).

<sup>18</sup> Ex. 4.

<sup>19</sup> Ex. 5.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Civil Rule 90.3(a)(2)(A).

<sup>23</sup> Civil Rule 90.3(a)(1)(E).

imputing the parent’s “potential income,” which is based on his or her “work history, qualifications or job opportunities.”<sup>24</sup> But income is not imputed until it is determined that the obligor has engaged in voluntary conduct “for the purpose of becoming or remaining unemployed [or underemployed].”<sup>25</sup> The Alaska Supreme Court has explained that “the relevant inquiry under Civil Rule 90.3 is ... whether a parent’s current situation and earnings reflects a voluntary and unreasonable decision to earn less than the parent is capable of earning.”<sup>26</sup>

Mr. T asserts that he cannot work right now, as he is recovering from a back surgery that occurred 9 months ago, which makes sitting for more than 20 minutes at a time uncomfortable, and currently, lifting more than 20 pounds reportedly medically inadvisable. Also, he is a full-time student in a rigorous graduate program of study, seeking to earn a Ph.D. He estimates spending on average 9-10 hours in class and 40 – 80 hours outside of class studying. Previously he worked construction jobs through college.

Opting to not work out of the home is not conclusive proof of voluntary and unreasonable unemployment. Other factors to be considered are a parent’s education, training, occupation, health, and the extent to which the parent is participating in a reasonably diligent work search.<sup>27</sup> If a parent is making a career change, the extent to which the child will ultimately benefit is a consideration.<sup>28</sup>

Mr. T asserts that holding a job is not feasible for him right now due to his back pain and busy schedule. His ultimate goal is to earn a Ph.D in clinical psychology, which he argues will allow him far greater earning potential than that of a construction worker, ultimately benefitting his daughter. When asked if he felt he’d be able to work at all during the 5 - 7 year program, Mr. T didn’t think that was likely and asked to have his monthly obligation dropped to \$50, the lowest allowable amount under Civil Rule 90.3. After he graduates he felt he’d be able to contribute to F’s support.

Mr. T submitted an expense worksheet setting forth his average monthly bills. He currently lives in City C, State A and pays almost \$2000 in rent for a townhouse he shares

---

<sup>24</sup> Civil Rule 90.3(a)(4); 15 AAC 125.060.

<sup>25</sup> *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

<sup>26</sup> *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

<sup>27</sup> 15 AAC 125.060(a).

<sup>28</sup> 15 AAC 125.060(c).

with a roommate. As he reports the traffic in the area can be quite heavy, his commute to school can often be 1.5 hours and cost him \$750 a month in gas and \$258 a month in vehicle maintenance. His monthly payments on his 2011 Dodge Ram are \$408. He spends \$900 a month on food, which he explained needs to be nutritious to aid in the expeditious healing of his back. His other monthly expenses, including insurance for his home and vehicle, total about \$500 a month. He has already taken out \$200,000 in student loans, although the payments are held in abeyance while his in school.

Enrolling in a competitive and demanding Ph.D. program is an undertaking that is to be commended. Mr. T is taking active steps to become a more productive, educated member of society and improve his earning potential. His transcripts show he is applying himself and achieving a consistent grade point average. He expressed a desire to be able to be financially able to contribute to F's expenses in the future.

However, Civil Rule 90.3 is based on the premise that every parent is obliged to support his or her children, and that the amount of support is equal to the portion of income that would be allocated to children if the family remained intact.<sup>29</sup> It is of note that Mr. T did not provide any income information to the Division when his monthly obligation was initially calculated in 2013.<sup>30</sup> Therefore, his child support of \$254 was based on a presumed full time job paying Alaskan minimum wage. It remained as set until the present as neither parent requested a modification, nor did Mr. T notify the Division that his projected income had increased. Mr. T's wages as reported by the Department of Labor were \$25,947.22 and \$35,995.46 in 2016 and 2017 respectively, which would have resulted in monthly support obligations of approximately \$380 and \$510.<sup>31</sup>

Additionally, Mr. T was a college student for the majority, if not all, of the beginning of F's life. His graduate program is 5-7 years in length, meaning when he completes his studies, she'll be already be a young adult. While his intentions of financially contributing are seemingly sincere, the median salary for a clinical psychologist is \$79,010<sup>32</sup> and Mr. T's monthly loan repayments based on the \$200,000 he's already taken out at a 7.8% interest

---

<sup>29</sup> Civil Rule 90.3 Commentary I.B., *The Nature of Child Support*.

<sup>30</sup> Ex. 1.

<sup>31</sup> Ex. 7. For a calculation of the estimated support, see Department of Revenue Child Support Services Division Child Support Calculator, available at <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

<sup>32</sup> United States Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, Psychologists available at <https://www.bls.gov/ooh/life-physical-and-social-science/psychologists.htm>.

rate will undoubtedly be significant. It is not reasonable to expect the custodial parent to cover all the expenses of their biological child while Mr. T pursues his educational goals for the first 11 – 13 years of her life.

Finally, it is lamentable that Mr. T has recently experienced a back surgery that has caused pain, discomfort and obvious inconvenience. To allow for this physical set back he has made prudent accommodations, like getting permission to finish some of his spring semester courses during the summer, sitting and standing throughout his classes, having a notably high food budget to ensure he is eating properly, and making time to attend twice weekly physical therapy appointments.<sup>33</sup> Just as he has made necessary changes in his life to adjust to the reality of a surgery, being a father requires a shift in life priorities, as well. Perhaps he can take a lighter course load, find a job where he can also spend time studying, or locate an apartment closer to school to eliminate his long commute.<sup>34</sup> Having a temporary physical disability such as a healing back may be difficult, but it does not present a complete bar to being able to maintain a part time job, and no such blanket excuse for an inability to pay child support is provided under Civil Rule 90.3 absent medical documentation verifying such a limitation.

#### **IV. Conclusion**

The Division determined Mr. T's 2019 child support obligation of \$204 per month by imputing income from a job of 20 hours a week earning minimum wage in Alaska totaling \$10,285.60 and combining this with a projected PFD of \$2,928.<sup>35</sup> However, this should be recalculated.

Mr. T currently lives in State A, where the minimum wage is \$12 an hour. He has the capacity to work 25 hours a week. Therefore, his total gross income is more appropriately calculated as \$15,600, combined with a PFD of \$1600 and subtracting allowable monthly deductions, including Social Security, Medicare and Unemployment

---

<sup>33</sup> Mr. T's testimony.

<sup>34</sup> It was not clear from the testimony how Mr. T is able to tolerate his commute for up to three hours a day when he purportedly cannot remain seated for more than 20 minutes at a time.

<sup>35</sup> Ex. 5.

Insurance.<sup>36</sup> This results in an adjusted annual income of \$15,389.17 and a monthly support obligation of \$256 for one child.<sup>37</sup>

**V. Child Support Order**

1. L T is liable for child support in the amount of \$256 per month for one child effective May 1, 2019 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated May 23, 2019 remain in full force and effect.

Dated: August 22, 2019

*Signed* \_\_\_\_\_  
Danika Swanson  
Administrative Law Judge

---

<sup>36</sup> On August 19, 2019 Governor Dunleavy released a videotaped statement saying that he will “accept a \$1600 PFD as proposed by the Legislature for the time being” but that he expected a special session in the fall. Therefore, a \$1600 is more likely than the \$2,928 PFD as proposed by the Division, which is far too speculative.

<sup>37</sup> 25 hours a week x \$12 x 52 weeks in a year + 1600 PFD - applicable monthly deductions = \$15,389.17 per year adjusted annual income.  $\$15,389.17 \times 20\% = \$3,077.83$  annually or \$256 per month. See also Department of Revenue Child Support Services Division Child Support Calculator, available at <https://webapp.state.ak.us/cssd/guidelinecalc/form>.



## **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 6th day of September, 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.]