

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

In the Matter of)	
)	
U L C)	OAH No. 20-0638-CSS
_____)	Agency No. 001213517

DECISION AND ORDER

I. Introduction

Custodian S K appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD/Division) on July 1, 2020. The modified order decreased U C’s monthly support obligation for his daughter Y, the child he shares with Ms. K, from \$565 to \$213. Ms. K objects and asserts that a reduction is inappropriate as Mr. C is voluntarily unemployed.

A telephonic formal hearing was held on August 10, 2020. Ms. K showed by a preponderance of the evidence that Mr. C has the education, training, and ability to be gainfully employed outside the home. Therefore, his support obligation is recalculated based on a full-time position paying minimum wage, resulting in a monthly obligation of \$390 for Y.

II. Facts

A. Material Facts¹

U C and S K are the biological parents of Y K, who is six years old. Ms. K is the custodial parent; she and Y live in Anchorage with Ms. K’s partner and two other children. Both adults work full time.

Mr. C and his wife live with their two children - ages 5 and 2 - on his father’s farm in City A, Washington, a town about two hours south of Seattle. His wife is currently enrolled in a nursing program, and he stays at home with the children. He also tends to his father’s eight head of organic beef cattle in exchange for housing.² He is a high school graduate and completed four years of a five-year plumbing program. He has spent time working as a plumber’s apprentice, but has skills and experience in other fields, as well.

¹ Material facts are based on the testimony presented at the hearing by Mr. C and Ms. K, as well as the submitted written record.

² During the hearing C testified that his work on his father’s farm was in exchange for room and board. However, he also submitted an expense sheet that states he currently pays \$800 a month in rent.

Mr. C's employment history has been rocky. In 2016 he worked briefly as a plumber's apprentice but was fired from the position and removed from the plumber's union after not showing up for a job. In 2017 he did not work, but rather returned to City B, Alaska, where extended family fed and housed him. He spent the year subsistence fishing. In 2018 he found work with a non-union company but was released prior to the end of the 90-day probationary period reportedly because he had less residential experience than another applicant. In 2019 he worked for a week, but then enrolled in a yearlong outpatient alcohol treatment program. He is slated to graduate in October of 2020 if not sooner. He is currently looking for a job but with little success.

Three years have elapsed since Mr. C was removed from the plumber's union, so he is now eligible to apply for readmission. He called the local office in Washington for more information and no one answered the phone. He has not investigated further or driven to the office, which is two hours away. He indicated that he might not return to the plumbing field, as the job often taxed his back and neck. He has experience in construction but claims there are few building projects during the Covid-19 pandemic. Also, his vehicle is unreliable, making taking a job in another town more risky. Finally, as he cares for his children while his wife is in school, the days he is free to work are limited.

Mr. C has been supporting himself and his family over the years by depleting his savings, as well as selling off personal possessions, including video games, firearms, fishing equipment, camping gear and a vehicle. He and his family rely on food stamps to purchase groceries.

B. Procedural History

In November 2016 an order issued by the Office of Administrative Hearings set Mr. C's monthly support obligation for Y at \$565 per month effective July 1, 2016 and ongoing. In April of 2020 Mr. C requested a modification review of this calculation and submitted documentation regarding his income.³ However, the Division did not rely on this information in reevaluating Mr. C's monthly obligation as it was over a year old.⁴ In the absence of anything indicating that he had a disability that prevented him from working, the Division instead calculated his potential income for 2020 by imputing the earnings of an

³ Ex. 2.

⁴ Ex. 4.

individual earning minimum wage in Washington and working part time.⁵ This resulted in a reduction of his monthly child support obligation to \$213.⁶

On July 10, 2020 Ms. K submitted an appeal of the support obligation, and a telephonic formal hearing was held on August 10, 2020. Mr. C and Ms. K both participated and represented themselves. The Child Support Services Division was represented by Child Support Specialist Brandi Estes. The hearing was recorded. At the close of the hearing the record remained open until August 21, 2020 to allow Ms. Estes to submit a report regarding current employment statistics for County A, Washington, the location of Mr. C's home in City A.

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.⁷ Ms. K filed this appeal, so she must prove by a preponderance of the evidence that the July 2020 Modified Administrative Child Support and Medical Support Order is incorrect.

A parent is obligated both by statute and at common law to support his or her children.⁸ 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 support for prior children, federal income taxes, and Social Security/Medicare withholdings.⁹ 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. C's child support was previously set at \$565 per month, so a support calculation that changes his obligation by \$84.75 or more would be sufficient to modify his child support obligation.¹¹ When the newly calculated amount is less than a 15% change, the

⁵ *Id.*

⁶ *Id.*

⁷ 15 AAC 05.030(h).

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

⁹ Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

¹⁰ AS 25.27.190(e).

¹¹ $\$565 \times 15\% = \84.75 .

Division still may grant the modification if three or more years have elapsed since the prior support order was issued.¹² Both conditions are met in the present case.

B. Mr. C's support obligation as the non-custodial parent under the primary custody formula

In April 2020 Mr. C requested a modification review of the July 2016 support order. The Division complied, and reevaluated Mr. C's projected total income from all sources.¹³ Mr. C provided the Division with outdated income information, so it was not relied upon to calculate his obligation.¹⁴ Rather, the Division calculated his projected income based on a part-time (20 hours a week), minimum wage (\$13.50) job in Washington, where he is living.¹⁵ This resulted in an a 2020 adjusted annual gross income of \$14,040.¹⁶ The Division deducted payments for federal income tax, Social Security and Medicare, resulting in an adjusted annual income of \$12,801.84.¹⁷ This was then multiplied by 20%, the requisite rate for the calculation of the non-custodial parent's support for one child.¹⁸ Under this calculation, Mr. C's monthly child support obligation came to \$213 for one child.¹⁹

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 imputing the parent's "potential income," which is based on his or her "work history, qualifications or job opportunities."²⁰ 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]."²¹ 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

¹² 15 AAC 125.321(b)(2)(C).

¹³ 15 AAC 125.050(d)(1).

¹⁴ Ex. 2.

¹⁵ Ex. 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Civil Rule 90.3(a)(2)(A).

¹⁹ Civil Rule 90.3(a)(1)(E).

²⁰ Civil Rule 90.3(a)(4); 15 AAC 125.060.

²¹ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

capable of earning.”²² 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.²³

Mr. C is a 28-year-old man with no known disabilities that would prevent him from holding compensated employment. He has considerable training as a plumber’s apprentice and has held plumbing positions in the past, albeit largely in the commercial field, not residential. He also has worked in construction and completed general labor jobs. He spent time building fences and other farm projects with his father earlier in the season, and now he cares for the eight beef cattle. He described looking for jobs listed online and with Total Employment and Management (TEAM), a temporary employment agency. He expressed frustration with the decrease in construction jobs due to the Covid-19 pandemic and at the time of the hearing had not yet applied to be reinstated in the union as a plumber’s apprentice. Due to his wife’s schooling schedule he claimed he was only available to work Friday through Monday due to childcare issues.

Mr. C admittedly has significant responsibilities associated with having both a family and a farm. It is commendable that he enrolled in an outpatient treatment program and has made such progress that his graduation date will reportedly be moved up to the end of summer 2020. However, Mr. C’s current situation is clearly not sustainable. He has exhausted his savings and has sold off the majority of his personal items of monetary value. He and his family are receiving public benefits, and the catalyst for this appeal was his solicitation of a downward modification for the support he pays for Y.

Mr. C asserts that his work search is diligent but fruitless due to the depressed economy, and that his availability is limited as he provides childcare while his wife is in school. An employment report submitted by the Division verifies his assertion that there has been a tremendous drop in the number of available jobs in the area.²⁴ However, an employment website for City A and the surrounding area currently has listings for general laborers, carpenters, construction workers and building custodians.²⁵ The TEAM website

²² *Vokacek v. Bokacek*, 933 P.2d 544, 549 (Alaska 1997).

²³ 15 AAC 125.060(a).

²⁴ Ex. 9.

²⁵ WorkSource Washington *available at* <https://seeker.worksourcewa.com/>.

shows two recently posted positions for a general laborer and a painter, paying \$14 and \$16 an hour, respectively.²⁶ He cares for his two children three days a week, although his oldest child is enrolled in a state funded preschool program. He is available to work evenings, as well as Friday through Monday.

Mr. C has also made little progress determining how to apply for readmission into the plumber's union. After not getting an answer to his call to the local office he did not follow up by calling a different office, or a main number. He did not report sending any emails or calling other union representatives who could assist him. It does not appear that his job search is diligent or rigorous. Instead, seemingly in keeping with his very sporadic work history, Mr. C is voluntarily choosing to be unemployed.

D. Recalculated child support

The Division determined Mr. C's child support obligation of \$213 per month by imputing income from a minimum wage, part-time position in Washington, resulting in an annual gross income of \$14,040.²⁷ Ms. K argued that this was inappropriate as Mr. C has the skills and experience to find a job that pays more than minimum wage. If he was reinstated into the plumber's union he would arguably be able to earn even more.

It is true that Mr. C has more abilities than an average entry level applicant. However, the Covid-19 pandemic has depressed the economy, stopping or slowing building and construction projects, impacting the number of both labor and plumbing jobs. The unemployment rate in Lewis County is over 10%.²⁸ Ideally in the coming months he will be reinstated in the plumber's union and the economy will rebound, making jobs more plentiful and his ability to earn higher wages more feasible. For the time being, however, while the market is still markedly depressed, Mr. C will likely be relegated to entry level positions that only pay minimum wage. Therefore, the Division appropriately calculated his potential income by relying on the minimum wage in Washington, \$13.50 per hour.

Regarding his time restrictions, however, the argument that Mr. C is not available to work is unconvincing. He takes care of one of his children three days a week while the other is in daycare. The eight cattle were not described as being an overly time-consuming

²⁶ *Id.*

²⁷ Ex. 4.

²⁸ Employment Security Department Washington State Monthly Employment Report *available at* <https://esd.wa.gov/labormarketinfo/monthly-employment-report>.

responsibility. He did not testify about any mental or physical restrictions that would prevent him from holding a paying position outside the home. No explanations were offered as to why Mr. C could not work the four remaining days of the week and/or evenings. Therefore, the Division erred in calculating his income based on part time hours, as opposed to full time. Working 40 hours a week for 50 weeks of the year and earning \$13.50 an hour results in a gross income of \$27,000.²⁹ After monthly allowable deductions are subtracted for federal income tax and social security payments in the amount of \$301.67 his adjusted annual income becomes \$23,379.96. From this amount 20% is marked as available for child support as per Civil Rule 90.3, which is \$4,675.99 annually, or \$390 per month.

IV. Conclusion

Mr. C is voluntarily unemployed. His potential income should be calculated as that of an individual working full time (40 hours per week, 50 weeks a year) and making minimum wage (\$13.50) an hour.

V. Child Support Order

1. U L. C is liable for child support in the amount of \$390 per month for one child effective May 1, 2020 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated July 1, 2020 remain in full force and effect.

Dated: September 3, 2020

Signed

Danika B. Swanson
Administrative Law Judge

²⁹ There are 52 weeks in a year. However, Mr. C's income is based on a 50-week year as it can be assumed that there will be days needed for sick leave, vacation, or other personal appointments.

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 20th day of October, 2021.

By: Signed
Signature
Mike Barnhill
Name
Deputy Commissioner
Title

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