

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

IN THE MATTER OF:)

D. A. W.)

) OAH No. 08-0019-CSS

) CSSD No. 001131308

DECISION AND ORDER

I. Introduction

This matter involves the Obligor, D. A. W.'s, appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 4, 2007. The order sets Mr. W.'s child support payment at \$229 per month effective January 1, 2008. The Obligee child is T. W., DOB 00/00/00.

The formal hearing was held on January 31, 2008. Mr. W. and the Custodian, R. O., a/k/a A. D. M., participated by phone. David Peltier, Child Support Specialist, represented CSSD. The record closed on February 1, 2008. On the record presented, Mr. W.'s appeal is denied because he has failed to establish by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect.

II. Facts

T. has been receiving public assistance benefits since July, 2001.¹ On July 11, 2007, CSSD issued an Administrative Child and Medical Support Order setting child support at \$229 per month effective August 1, 2007, and arrears in the amount of \$12,883 from July 1, 2001 through July 31, 2007.² This order was served on July 25, 2007. Mr. W. requested an administrative review of the July 2007 Order.³

CSSD requested current income information from Mr. W.; however, Mr. W. failed to provide any information. CSSD calculated Mr. W.'s child support obligation for 2001, 2002,

¹ T. received public assistance Medicaid grants through either S. O., his grandmother, or R. O., his mother, beginning in July 2001. CSSD Pre-Hearing Brief at pg. 1. He has also received Alaska Temporary Assistance. *See e.g.*, Exhibit 2, pp. 1, 2.

² Exhibit 1.

³ Mr. W. also questioned his paternity of T. Because Mr. W. signed a voluntary Affidavit of Paternity shortly after T. was born, CSSD informed him that any proceeding to disestablish paternity would need to be filed in Superior Court. Exhibit 6.

2003, and 2004 based on actual wages reported to the Alaska Department of Labor.⁴ The Department of Labor had no record of reported wages for Mr. W. after 2004. For purposes of calculating Mr. W.'s child support obligation after December 31, 2004, CSSD imputed income based on the minimum wage of \$7.15 per hour multiplied by 2080 hours.⁵ Using this information, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 4, 2007. The Amended Order set Mr. W.'s ongoing child support at \$229 per month, with arrears of \$14,028 for the period from July 1, 2001 through December 31, 2007.⁶

On January 7, 2008, CSSD received Mr. W.'s appeal of the December 2007 Order. He stated he was appealing because he did not owe the custodian all the support ordered because T. had lived with his grandmother for five years.⁷

When questioned about his current living and employment situation Mr. W. explained that he is unemployed and has not been looking for work. He has a tenth grade education. In the past Mr. W. was employed as a house painter for \$10 per hour and at a lube and oil shop for minimum wage. He was fired from the painting job because he was consistently late for work; he quit his job at the lube and oil shop because it was a dead-end job. Mr. W. has no apparent steady source of income.

Mr. W. does not work or look for paying work because he spends his time and energy pursuing his art – working with glass – and building his reputation as a glass artist. He estimated that he spends the equivalent of 4 days a week, 6 hours a day on his art. When he needs something, he will either barter a piece of glass or he will sell a piece to friends or family. His is hopeful that in the future his reputation as an artist will grow and his hard work will pay off. Until that day, he will continue to put his time and energy into his art.

Mr. W. lives with his girlfriend and four children, one of whom is his two-year old biological child. His girlfriend is unemployed, but she receives child support for the other three children in the house and public assistance. Mr. W. testified that he does not contribute in any substantial manner to the rent or monthly living expenses. His expenses are minimal - \$100 per

⁴ Exhibit 9.

⁵ Exhibit 6.

⁶ Exhibit 6.

⁷ Exhibit 8.

month for gas and personal items. He owns a 1995 Chevrolet truck. His only debt is \$5000 he owes to an insurance company for an automobile accident. Mr. W. is not paying anything on this debt. His testified that his girlfriend pays all of the rent, food and utilities, which total approximately \$1200 per month.

III. Discussion

Mr. W. has raised two objections to the Amended Administrative Child Support and Medical Support Order: 1) the custodian should not receive the child support because she has not had custody of T. 100 % of the time;⁸ and 2) the award is beyond his financial means.⁹

1) Payment to the Custodian

A noncustodial parent is liable for reimbursing the State for public assistance, Medicaid and foster care services provided on behalf of the child(ren).¹⁰ CSSD's regulations require the division to collect support from the date the services were initiated, up to six years prior to the date the Obligor is served with notice of the support obligation.¹¹

The payments do not go directly to the Custodian. CSSD collects child support from the Obligor even though the actual custodian of the child may change, such as when a relative or other third party has custody. Child support payments are made payable to CSSD¹², which redirects the payments to the appropriate custodian at the time of collection. Mr. W.'s concern has been addressed.

2) Financial Resources.

A parent is obligated both by statute and at common law to support his or her children.¹³ An Obligor cannot place his or her needs ahead of the Obligee child. Mr. W. cannot avoid this obligation simply because he finds it more fulfilling to pursue a "hobby." The Obligor has the burden of proving his or her earning capacity.¹⁴ Alaska law allows CSSD to use an Obligor's "potential income" if a finding is made that the Obligor is voluntarily and unreasonably

⁸ Exhibit 8, Appeal of Administrative Review Decision.

⁹ W. Testimony.

¹⁰ AS 25.27.120(a).

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² Exhibit 1, p. 6.

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

unemployed or underemployed.¹⁵ Although CSSD's Amended Administrative Child Support and Medical Support Order did not specifically find Mr. W. to be voluntarily unemployed, the agency imputed income of \$7.15 per hour to him based on the minimum wage, which is an implicit finding of voluntary unemployment.¹⁶

Mr. W. makes no excuses for his unemployment. To the contrary, since 2005, he has not attempted to find a wage paying job and has no desire to do so. His testimony that he is working on establishing his reputation as a glass artist is not persuasive. He spends 24 hours a week on his "hobby."¹⁷ He admits that he has not and is not actively looking for work because he would rather work on his glass. Based on these facts, W. is voluntarily and unreasonably unemployed or underemployed.

When, as here, an Obligor is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income," which is based on the Obligor's "work history, qualifications and job opportunities."¹⁸ The use of "potential income" in a child support obligation is not to punish the Obligor parent; rather, it is to insure that the child(ren) and the other parent are not "forced to finance" the Obligor's lifestyle.¹⁹ The commentary states the court should consider "the totality of the circumstances" when deciding whether to impute income to the obligor parent.²⁰ A primary goal of imputing income, according to the Alaska Supreme Court, is to compel the parent to find full-time employment:

An important reason -- if not the chief reason -- for imputing income to a voluntarily underemployed parent is to goad the parent into full employment by attaching an unpleasant consequence (a mounting child support debt or, in certain cases of shared custody, a reduced child support payment) to continued inaction. Indeed, in primary and shared custody situations alike, an order imputing income often yields no tangible benefits to the children unless and until it impels the underemployed parent to find a job.^[21]

Mr. W. spends 24 hours a week pursuing his glass. Were he to spend this time looking for paid employment, Mr. W. very likely would be able to find work that pays him at least a minimum wage. His failure to find work forces T. to finance Mr. W.'s lifestyle. There is simply

¹⁵ Civil Rule 90.3(a)(4).

¹⁶ Exh. 6 at pgs. 4 & 6.

¹⁷ W. Testimony.

¹⁸ Civil Rule 90.3, Commentary III.C.

¹⁹ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

²⁰ Civil Rule 90.3, Commentary III.C.

no sufficient explanation in the record for why Mr. W., being a young and apparently healthy individual, is not working full-time.

IV. Conclusion

Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect. CSSD has based Mr. W.'s child support obligation on actual income data where available and imputed income when actual data was unavailable. Although CSSD's Amended Administrative Child Support and Medical Support Order did not specifically find Mr. W. to be voluntarily unemployed, CSSD imputed income to him, which is an implicit finding of voluntary unemployment. This finding was proven correct by Mr. W.'s own admission. Under the "totality of the circumstances," CSSD correctly imputed income to Mr. W. His child support obligation for all the time period at issue, including the ongoing amount, was correctly calculated.

V. Child Support Order

- All provisions of the Amended Administrative Child Support and Medical Support Order issued December 4, 2007, remain in effect.
- Mr. W. is liable for child support in the amount of \$86 per month for the period from July 1, 2001, through December 31, 2001; \$191 per month for 2002; \$87 per month for 2003; \$161 per month for 2004; and \$229 per month for 2005, 2006, 2007, and ongoing.

DATED this 6th day of February, 2008.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

²¹ *Beaudoin v. Beaudoin*, 24 P.3d 523 (Alaska 2001).

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 25th day of February, 2008.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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