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

In the Matter of	)	
	)	
E. N.	)	OAH No. 23-0232-CSS
	)	

DECISION AND ORDER

I. Introduction

E. N. appeals an Administrative Review Hearing Decision issued by the Child Support Services Division (Division) in March 2023, which amended the Division's August 2022 Administrative Support Order. The Decision reduced his established monthly support obligation for W., the 18-year-old child he shares with custodial parent L. B., from $1,198 to $241 beginning September 1, 2022. Mr. N. raises multiple objections. The only issue properly before this tribunal, however, is whether he should be relieved of his obligation to pay child support due to his alleged inability to work from May 2022 onward after experiencing a fall in November 2021.

Through the testimony and evidence presented at the hearing Mr. N. did not establish by a preponderance of the evidence that the Division erred assigning him a financial support obligation for his daughter W. from June 2022 onward. However, the Division's calculation of his obligation as set in the March 2023 Administrative Review calculation nonetheless proven to be inaccurate, as Mr. N. was imputed no income from the end of May 2022, when his teaching contract ended, through December 2022, despite his failing to produce convincing evidence of his inability to continue working. He was imputed only part time wages beginning January 2023 onward. Accordingly, the Division's original August 2022 Administrative Support Order is reinstated, setting Mr. N.'s preorder arrears for June 1, 2022, through August 31, 2022, and establishing his support obligation at $1,198 per month beginning September 1, 2022, based on a primary custody calculation.

II. Facts

A. Material Facts

E. N. and L. B. are the parents of 18-year-old W. Mr. N. currently lives in California, while Ms. B., her husband and W. live in Anchorage, Alaska.

Mr. N. began his career as a teacher working in rural Alaska some 20 years ago. He and Ms. B. were coworkers finishing their first year in School District A. when W. was conceived. The couple relocated to Anchorage, purchased a home, and cohabitated before the relationship ended approximately six years later.[1] Mr. N. left the state, and for the next decade he ran several businesses, worked on writing projects, and earned a doctorate degree.[2] He then returned to teaching in schools in rural Alaska for the next 14 years, the last three of which were for School District B. in City A., Alaska.[3] In 2020, 2021 and the first three quarters of 2022 he earned $82,269.80, $85,548.91, and $56,946.08 respectively.[4]

On November 14, 2021, Mr. N. reported falling in front of his housing unit in City A. and hitting the back of his head on the ice.[5] He asserted he lost consciousness, then vomited for several days afterwards. On November 16th he was seen by B. U., MD, at the Medical Clinic A. and was diagnosed with a concussion, rotator cuff injury, multiple bruises, and lose dental work.[6] She recommended he be seen at a higher-level facility off the island for further evaluation.

1. Mr. N.'s medical evaluations following the November 2021 fall

Shortly thereafter Mr. N. flew to California. He submitted a single bill from Medical Center A.'s Emergency Room that indicated imaging was done of his left leg and right shoulder on November 20, 2021.[7]

He also provided billing statements for three dental visits with Dr. N. C., his dentist and fiancée, on November 19, 21 and 22, for a "limited oral evaluation," "an after-hours office visit," and "an occlusal adjustment."[8] He returned over the holiday and spring breaks and was billed for occlusal devices - mouthguards – and a single visit in March 2022 for "unspecified TMD [temporomandibular disorder] therapy."[9]

A letter submitted from Dr. C. dated February 2023 explained that Mr. N. has been her dental patient since 2012, and over the years has received many treatments from her. In October 2021, one month prior to his fall in City A., he underwent extensive bone grafting and received

1 Ex. 4, p. 5.
2 Email dated April 28, 2023.
3 *Id.*
4 Ex. 3, p. 7; Ex. 9, p. 1.
5 Ex. 5., p. 61. N. test.
6 *Id.*
7 Ex. 5.
8 *Id.*
9 *Id.*

new crowns. Following his fall in November 2021 her letter mentions his "being under her care for injuries" during the year, but that "treatments were limited" and "[Mr. N.] did not show any improvement on his damaged teeth and TMJ injuries."[10]

After his November 2021 trip to California for emergency medical and dental evaluations, Mr. N. returned to his teaching position in City A.[11] He resumed regularly walking a mile from his residence to the school.[12] He did not mention having difficulties carrying out his duties and responsibilities as an educator, nor did he testify about needing or requesting any form of accommodation at his workplace. In December he was advised by School District B. that he would not be offered a teaching contract for the 2022-2023 school year, but Mr. N. attributed this to the fact that it was his third year teaching at the school. He claimed fourth year contracts are rare as they implicate tenure.[13] He completed the academic year, which ended in May 2022, and returned to California.

2. Mr. N.'s medical evaluations since May 2022

Shortly after arriving in California, Mr. N. testified that he contracted the COVID-19 virus and was so ill he could not work or leave the house for several months.[14] Then, in September of 2022, billing statements in the record establish that he was approved for multiple outpatient tests and procedures that included MRIs of his upper arm, brain stem and lumbar spine, and a nerve test.[15] Mr. N. asserted that "dental wrapped up in October and November."[16]

In December 2022 he was seen at Medical Clinic B. in City B., California, for headaches and numbness/tingling in his left lower leg that reportedly would last a few seconds or a few hours.[17] He denied vision issues, hearing loss, anxiety, depression, chest pain, vomiting or any other significant ailments. His reading, writing and language were noted as being "intact," his speech "fluent," and he was described as "a good historian, with a pleasant affect." He was advised to seek additional MRIs, a nerve test, and was given a prescription for nerve pain.

---

10 Letter from Dr. N. C. dated February 23, 2023. *See also* email from Mr. N. dated April 21, 2023.
11 N. test.
12 *Id.*
13 Email dated April 28, 2023.
14 Mr. N. submitted no documentation of this diagnosis.
15 Ex. 5.
16 Ex. 5, p. 8.
17 December 12, 2022 consultation with Medical Center B.

That same month Mr. N. began a series of six weekly physical therapy appointments for his shoulder and leg.[18] He was assigned associated home exercises, which include seated calf stretches, calf raises, hip abductions and various arm movements done with an elastic band.[19]

Finally, Mr. N. submitted a note dated February 22, 2023, from the Comprehensive Hospitalist and Ambulatory Physicians stating that he has been under their care since October 2022. Due to the injuries [he suffered from his fall in 2021] and ongoing medical evaluations and treatments, the note states that he has been "unable to return to his normal work since he completed his contract."[20] At the time of the second and final hearing date in May 2023, Mr. N. was still unemployed.

B. Relevant Procedural History

In June 2022 Ms. B. submitted an application for services to the Division. Income information was solicited by the Division from both parties; Mr. N. did not respond. The Division proceeded to calculate his obligation based on his last four consecutive quarters of wages, totaling $92,298.27. Subtracting $1,703.30 in monthly deductions for federal income tax, social security, Medicare and unemployment insurance resulted in an annual adjusted income of $71,858.67. This amount was then multiplied by 20%, the statutorily set rate for the calculation of the non-custodial parent's support for a single child.[21] Based on this calculation, in August 2022 the Division issued an Administrative Support Order setting his monthly support obligation for W. at $1,198.

Mr. N. appealed based on various general objections relating to unfairness, a purported historical agreement between the parties that profits from home they own jointly would be accepted in lieu of child support, and his professed inability to work past May 2022 due to medical issues.

An administrative review hearing was held in February 2023. Both parties attended telephonically. Mr. N. claimed that while he could perform "basic duties," his ongoing medical treatments continued to prevent him from holding a job. After considering Mr. N.'s submitted billing statements and testimony, the Division recalculated his support obligation based on his

---

18 Ex. 5.
19 Ex. 5, p. 47-51.
20 February 22, 2023 note from CHAP, signed by Jemmilyn Stearns, PA-C.
21 Civil Rule 90.3(a)(2)(A).

2022 earnings through May, which totaled $56,946.08.[22] Standard monthly deductions were taken out totaling $829.80, resulting in an annual adjusted income of $46,988.48. No additional earnings were imputed to Mr. N. for the remainder of the year. After multiplying his adjusting income by the requisite 20%, Mr. N.'s 2022 monthly child support obligation was set by the Division at $783.[23]

Beginning January 2023, the Division decided he was unreasonably unemployed, and therefore imputed wages from a part time position earning California minimum wage. His support obligation was calculated based on the hourly rate of $15.50 multiplied by 1040 (20 hours a week x 52 weeks in a year), resulting in an annual gross income of $16,120. Subtracting $140 in standard monthly deductions resulted in an adjusted annual income of $14,438.68. Accordingly, the Division's March 2023 Amended Administrative Order set Mr. N.'s 2023 monthly support obligation for W. at $241.

Mr. N. appealed the Order in April 2023, asserting that he should owe no support obligation due to his ongoing medical recovery. He again referenced a prior agreement with Ms. B. involving projected profits from the sale of jointly owned property and his child support obligation.

A formal hearing was held over two dates, April 25 and May 30, 2023. Mr. N. and Ms. B. both participated and represented themselves. The Division was represented by Child Support Specialist Mark Phang. The Division's prehearing brief and accompanying Exhibits 1- 10 were admitted into the record, as were Mr. N.'s submitted emails received on 4/18/23, 4/19/23, 4/20/23,4/21/23, 4/24/23, 4/25/23, 4/26/23, 4/28/23, 5/4/23, 5/5/23 and 5/29/23, and Ms. B.' emails received on 4/21/23 and 5/11/23. The record closed on May 30, 2023.

III. Discussion

The issue to be resolved is whether the Division properly assigned Mr. N. a child support obligation. As the person challenging the Division's determination, Mr. N. has the burden of proving by a preponderance of the evidence that the March 2023 Administrative Review Hearing Decision represents a calculation error.[24]

A. Legal framework for child support modifications

---

22 Ex. 6.
23 Civil Rule 90.3(a)(1)(E).
24 15 AAC 05.030(h).

A parent is obligated both by statute and common law to support his or her children.[25] 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.[26]

B. The agreement between the parties regarding jointly owned property

Mr. N.'s argument that he and Ms. B. had a prior agreement regarding child support and the potential profits of a jointly owned home will not be considered. This purported arrangement, which is refuted by Ms. B., amounts to a real property dispute that is outside of this tribunal's jurisdiction.

C. Mr. N.'s arrears and ongoing support obligation as established in the Division's March 2023 Amended Administrative Support Order

When establishing a child support order, the Division first determines the amount of pre-order arrears, which is the amount owed from the date the proceeding was initiated until a final administrative order is issued.[27] As arrears are calculated with the benefit of hindsight, the regulations provide that arrears are calculated based on "the actual annual income that the parent earned or received each calendar year for which arrears are sought to be established."[28]

The March 2023 Amended Administrative Support Order at issue in this appeal set Mr. N.'s arrears at $6,204 for the months of June 1, 2022, through March 31, 2023. This was based on a support calculation of $783 per month for June through December 2022, stemming from total earnings of $56,946.08. Beginning January 1, 2023, the Division concluded that Mr. N. was voluntarily and unreasonably unemployed.[29] Therefore, earnings were imputed from a part time position at California minimum wage, resulting in arrears of $241 per month for January 2023 through March 2023.

Once arrears are determined, the Division calculates the amount of ongoing support. 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 standard deductions. In this case, the Division projected

---

25 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.
26 Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).
27 Civil Rule 90.3.
28 15 AAC 125.030(e).
29 Civil Rule 90.3(a)(4).

Mr. N.'s 2023 imputed earnings forward, resulting in an ongoing monthly support obligation of $241.

Whether the Division correctly calculated the arrears owed as well as the ongoing support hinges on the Division's assessment under Civil Rule 90.3 of Mr. N.'s capacity to earn an income after May 2022.

D. *A determination of whether Mr. N. is voluntarily and unreasonably unemployed*

There is an exception to the requirement that support obligations be set based on total income from all sources. Specifically, when a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support may be calculated by imputing the parent's "potential income," which is based on his or her "work history, qualifications or job opportunities."[30] However, 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]."[31] 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."[32]

Here, Mr. N.'s income fell from approximately $82,270 in 2020 and $85,549 in 2021 to $0 after May 2022, when his contract ended with School District B. But a mere drop in income, no matter how severe, is not conclusive proof of voluntary and unreasonable unemployment. When evaluating whether a parent is voluntarily or unreasonably underemployed, factors that can 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.[33]

In the days immediately after Mr. N. fell on the ice in City A., when any resulting medical injuries would have been most acute, he immediately flew to California for medical attention. While he testified at the hearing that he was quite concerned about possible "bleeding on the brain," the record indicates that his November 20, 2021, visit to the emergency room resulted in imaging of his leg and shoulder, but no additional testing. Nothing in the record indicates any medical professional was concerned Mr. N. was suffering more significant or immediate health issues. He was able to return to City A. and complete his teaching contract

---

30 Civil Rule 90.3(a)(4); 15 AAC 125.060.
31 *Bendixen v. Bendixen,* 962 P.2d 170, 172 (Alaska 1998).
32 *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).
33 15 AAC 125.060(a).

through the academic semester. No evidence was presented that his injuries worsened over the school year, rendering him debilitated to the extent that a year later, in 2022, he could no longer work at all.

Regarding Mr. N.'s ongoing dental care, there is no documentation in the record of the emergency dental evaluation done a few days after his fall by his fiancée, Dr. C., beyond billing statements. Instead, Mr. N. submitted her February 2023 letter that does not attribute any specific dental injuries to his fall in City A., nor explain how the injuries occurred. It broadly references "damaged teeth," "TMJ [temporomandibular] injuries," "broken teeth" and "teeth trauma" requiring "extensive and complex treatments" that began once he returned to her care in May 2022.

Given that Mr. N. fell backwards, not on his face, and that the physician who evaluated him in City A. two days after his fall merely noted "lose dental work," it is difficult to believe that he suffered such extraordinary dental trauma and yet was able to continue working for the next six months. No explanation was provided regarding what the "complex treatments" involved, nor why they were so intensive that Dr. C. claimed "had Mr. N. returned to Alaska or any job up until after February 2023 [he] would have jeopardized his treatment and progress." Given Dr. C.'s exceptionally vague explanations of Mr. N.'s injuries and her recommendation that he cease working for approximately the duration of his child support order, the letter from Mr. N.'s fiancée is received with considerable skepticism and is given little consideration.[34]

Regarding his work history and qualifications, Mr. N. asserted that during his career he has received "many, many accolades," and "many many, many awards and recognitions" based on his teaching, coaching, and community work accomplishments "such that he never has to worry about finding a job."[35] Clearly his extensive resume makes him a candidate for a variety of positions within the community, and medical appointments can be scheduled around work shifts. His history includes writing, which lends itself to working remotely. Nonetheless, after learning Ms. B. had filed a request for services with the Division Mr. N. still made no effort to

[34] "Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient." *See* Section 2.G. Personal Relationships with Patients, American Dental Association Council on Ethics, Bylaws and Judicial Affairs, Principles of Ethics and Code of Professional Conduct, March 2023, *available at* https://www.ada.org/.

[35] Email dated April 28, 2023.

secure a paying position to support W. His daughter graduated from high school in May 2023,[36] signaling the end of his legal responsibility to pay child support.

Despite Mr. N.'s myriad skills and professed ability to easily find employment, he deliberately chose to devote the past year to attending medical and dental appointments and vigorously fighting this child support order in lieu of making even minimal efforts to secure a job. This represents willful, voluntary conduct for the express purpose of remaining unemployed.

E. Mr. N.'s arrears and ongoing support obligation as established under Civil Rule 90.3(a) and set forth in the Division's August 2022 Administrative Support Order

The Division reduced Mr. N.'s monthly support obligation for W. after deciding that from May through December 2022 he was unable to work due to a protracted recovery period. From January 2023 onward he was imputed wages from a part time, minimum wage job. This calculation is incorrect, as it has been established that Mr. N. is voluntarily and unreasonably unemployed. His imputed income should be calculated based on his most recent earnings as a teacher.

The correct calculation of Mr. N.'s support obligation is set forth in the Division's original August 2022 Administrative Support Order. The Division based his income on his last four quarters of consecutive wages, with no excused periods of unemployment. Preorder arrears are calculated for June through August 2022, and a monthly support obligation for W. is appropriately established under Civil Rule 90.3 at $1,198 based on a primary custody calculation.

IV. Conclusion

Mr. N. bears the burden of showing by a preponderance of the evidence that the Division erred by assigning him a financial support obligation for his daughter W. under Civil Rule 90.3(a). Based on the evidence provided and the testimony elicited at the hearing, this burden was not met. Rather, the evidence shows that the Division erred when it dramatically reduced his obligation in the Administrative Review Hearing process, despite his failure to show that he was medically unable to work as a teacher - or in any capacity - from May 2022 through May 2023. Therefore, the Division's March 2023 Administrative Review Hearing Decision is clearly

[36] B. test.

erroneous and will be disregarded. The Division's original August 2022 Administrative Support Order, which properly established Mr. N.'s child support obligation at $1,198 per month for one child based on a primary custody calculation, is reinstated.

V. Child Support Order

1. E. N. is liable for child support in the amount of $1,198 per month for one child effective September 1, 2022, and ongoing based on a primary custody calculation.
2. E. N. is liable for preorder arrears in the amount of $1,198 per month for the months of June, July and August, 2022.
3. All other terms of the August 2022 Administrative Support Order remain in full force and effect.

Dated: June 16, 2023

Signed

Danika B. 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 10th day of July, 2023.

By: *Signed*
Adam Crum
Commissioner, Department of Revenue

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