

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

IN THE MATTER OF:)

R. S. K.)

) OAH No. 08-0048-CSS

) CSSD No. 001092923

DECISION AND ORDER

I. Introduction

The Obligor, R. S. K., disputes the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 14, 2007.¹ The order imputed income to Mr. K. and increased Mr. K.'s child support payment from \$187 to \$503 per month effective September 1, 2007. Subsequently, based on actual income information, the division has recalculated the child support amount to be \$314 per month effective September 1, 2007.² The Obligee child is A. K., DOB 00/00/94.

A hearing was held on March 3, 2008. Mr. K. appeared by telephone and represented himself; the Custodian of record, C. C., participated in person and represented herself. A supplemental hearing was held April 14, 2008. Neither the Obligor nor the Custodian participated in the supplemental hearing.³ Andrew Rawls, Child Support Specialist, appeared for CSSD at both hearings. Rebecca L. Pauli, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearings.

II. Facts

Ms. C. requested Modification of an Administrative Child Support and Medical Support Order on August 20, 2007. The request was accompanied by a handwritten note indicating that Mr. K. owned several boats and a commercial fishing permit.⁴ CSSD issued a Notice of Petition for Modification of Administrative Support Order on August 28, 2007, and requested Mr. K. provide current income information. Mr. K. did not provide the information requested and

¹ Exhibit 1.

² CSSD Submission to Record filed April 8, 2008, and Exhibits 9 - 11.

³ Attempts were made to contact the Obligor and the Custodian at the numbers provided in the file. The Obligor's phone rang and was not picked up by an answering machine or voice mail. The Custodian's phone rang through to a recorded message indicating that the number called could not receive calls. The record remained open until April 25, 2008, to provide Mr. K. with an opportunity to show reasonable cause for his failure to participate in the April 14, 2008, supplemental hearing.

⁴ Exhibit 3 at 2.

CSSD imputed income to him based on the Occupational Employment Statistics (OES) wages for a fishing worker: \$35,200 per year.⁵ Using imputed income, CSSD calculated Mr. K.'s monthly child support payment to be \$503 per month.⁶

Mr. K. appealed because he believes he earns substantially less than this amount per year. In the alternative, Mr. K. asserts that he will suffer a hardship unless the child support amount is varied from \$503 per month. In support of his appeal he provided a two page document entitled "Account Activity – Trident Seafoods Corporation." and two receipts indicating that he paid \$447.17 for heating oil in November and \$322.81 in December 2007.⁷

At the March 2008, hearing, Mr. K. testified that he did not own the F/V S No Name but leased it from his mother. When asked, Mr. K. was unable to provide specific evidence of his monthly expenses. CSSD requested additional information from Mr. K., specifically, his complete 2005 and 2006 federal income tax returns including all worksheets, schedules, W-2 forms, 1098 and 1099 forms. Mr. K. provided his 2006 return and an IRS transcript of his 2005 return.⁸ For federal income tax purposes Mr. K. reported taxable wages in the amount of \$118.⁹ Utilizing Mr. K.'s 2006 return CSSD determined Mr. K.'s income for purposes of child support to be \$18,840 and from that it calculated Mr. K.'s monthly child support payments to be \$314 per month.¹⁰ CSSD allowed all deductions claimed by Mr. K. on his 2006 tax return except certain business deductions: \$7,000 in depreciation for the F/V No Name because Mr. K. testified he did not own the vessel, a \$6,005 loan payment, \$12,348 identified as per diem, and \$1,478 for provisions.¹¹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹² Civil Rule 90.3(a)(1) provides that an Obligor's child support payment is to be calculated based on his or her "total income from all sources." When the Obligor parent is self-employed his or

⁵ 15 AAC 25.050; Exhibit 5 at 4, 5.

⁶ Exhibit 6.

⁷ Exhibit 7.

⁸ Exhibits 9, 10.

⁹ Exhibit 9 at 15.

¹⁰ Exhibit 11 (\$18,840 in 2006 Income = Wages of \$118 + PFD of \$1,654 + Business Income of \$17,068).

¹¹ Exhibit 9 at 14, 26; 15 AAC 125.030(c).

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

her income includes gross receipts less the ordinary and necessary expenses required to produce the income.¹³ “A very limited number of expenses may be deducted from income.”¹⁴

Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by [the tribunal] to be inappropriate. Expense reimbursements and in-kind payments such as ...reimbursed meals should be included as income if the amount is significant and reduces living expenses.¹⁵

Therefore a self-employed parent may not be able to deduct all of the business expenses reported to the IRS when calculating child support.

Mr. K. has the burden of proving by a preponderance of the evidence that the monthly child support obligation calculated by CSSD is incorrect.¹⁶ CSSD correctly calculated Mr. K.’s monthly child support to be \$503 per month effective September 1, 2007, based on the information available to it at the time. Once Mr. K. provided actual income information CSSD recalculated annual income which resulted in a child support obligation of \$314 per month. Child support determinations calculated under Civil Rule 90.3 from an Obligor’s actual income are presumed to be correct. CSSD does not dispute that the Modified Administrative Child Support and Medical Support Order issued November 14, 2007, ordering child support in the amount of \$503 per month is incorrect and that the correct amount is \$314 per month effective September 1, 2007. Mr. K. has not opposed this new calculation.

At the March 2008, hearing Mr. K. indicated that any increase in his child support obligation would produce a hardship. An Obligor parent may obtain a reduction in the amount calculated, but only if he or she shows that “good cause” exists for the reduction. In order to establish “good cause,” the claimant must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”¹⁷ Mr. K. has not introduced evidence sufficient to establish that child support based on his actual income would result in manifest injustice if it were not varied.

¹³ Civil Rule 90.3, Commentary III B.

¹⁴ Civil Rule 90.3, Commentary III D.

¹⁵ Civil Rule 90.3, Commentary III B.

¹⁶ 15 AAC 05.030(h).

¹⁷ Civil Rule 90.3(c).

IV. Conclusion

Mr. K.'s actual income for purposes of calculating his child support obligation was \$18,840 in 2006. Therefore, his monthly child support obligation should be \$314 per month effective September 1, 2007.

V. Child Support Order

- R. S. K. is liable for modified ongoing child support in the amount of \$314 per month effective September 1, 2007. The Modified Administrative Child Support and Medical Support Order issued November 14, 2007, is so amended.
- All other provisions of the Modified Administrative Child Support and Medical Support Order issued November 14, 2007, remain in full force and effect.

DATED this 20th day of May, 2008.

By: Signed
Rebecca L. Pauli
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 6th day of June, 2008.

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

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