

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

IN THE MATTER OF)	OAH No. 08-0058-CSS
J. A. W.)	CSSD No. 0011427992
)	
_____)	

DECISION AND ORDER

I. Introduction

On March 5, 2008, a formal hearing was held to consider the child support obligation of J. A. W. (Obligor) for the support of his children, C., Y., and Z. (Obligee).¹ Mr. W. participated in the hearing. The custodial parent, J. E. R., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on March 14, 2008.

This case is Ms. R.'s appeal of the Division's order establishing Mr. W.'s monthly child support obligation for his children, C., Y., and Z. I conclude that Mr. W.'s child support arrears for 2007 and 2008 should be set at the monthly amount in the Division's calculations at Exhibit 8 based on an estimate of his actual income. These calculations result in a monthly child support amount of \$134 for April 2007 and \$432 from March of 2007 through March of 2008. Because Mr. W. was unreasonably and voluntarily underemployed at the time of the hearing, I conclude that Mr. W.'s ongoing child support beginning in April of 2008 should be set at the monthly amount in the Division's calculations at Exhibit 10, which are based on imputed full-time Alaska minimum wage earnings plus a PFD. These calculations result in a monthly child support obligation of \$400.

II. Facts

Ms. R. requested public assistance for her children, C., Y., and Z., beginning in April of 2007.² Paternity is not in dispute.³ Mr. W. is named as the children's father on their birth certificates.⁴

¹ The hearing was held under Alaska Statute 25.27.170.

² Division's Pre Hearing Brief, page 1.

³ Division's Pre Hearing Brief, page 1. & Recording of Hearing.

⁴ Ex. 2 & Division's Pre Hearing Brief, page 1.

The Division served Mr. W. with an Administrative Child and Medical Support Order on September 27, 2007.⁵ Mr. W. requested an administrative review of that order.⁶

The Division issued an Amended Administrative Child and Medical Support Order on January 10, 2008.⁷ The Division set Mr. W.'s monthly ongoing child support for C., Y., and Z. at \$134. The order also established arrears in that monthly amount beginning in April of 2007. Ms. R. requested a formal hearing.⁸

At the hearing, Mr. W. and Ms. R. provided information regarding Mr. W.'s employment.⁹ After the hearing, as requested, the Division provided new calculations based on this information and imputed wages.¹⁰

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at Exhibit 10 and the information used in these calculations are correct and most accurately reflect Mr. W.'s current earning capacity.¹¹ These calculations result in a monthly child support amount of \$242 for one child and \$327 for two children, and \$400 for three children based on imputed full-time minimum wage earnings, plus a PFD.¹²

I also find that Mr. W. was unreasonably and voluntarily underemployed at the time of the hearing.¹³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. R. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴

⁵ Ex. 5.

⁶ Ex. 6.

⁷ Ex. 8.

⁸ Ex. 9.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing & Ex. 10.

¹¹ Recording of Hearing & Ex. 10.

¹² Ex. 10.

¹³ Recording of Hearing.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

Ms. R. showed that Mr. W. was unreasonably and voluntarily under-employed and was capable of earning an annual income equal to full-time Alaska minimum wage earnings plus a PFD.

Income can be imputed to an obligor in cases of unreasonable voluntary underemployment.¹⁵ The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.¹⁶ On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁷

Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.¹⁸ The custodial parent and the children should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.¹⁹ The Alaska Supreme Court has indicated that the circumstances surrounding an obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.²⁰

In this case it is appropriate to impute income. Mr. W. is unreasonably and voluntarily underemployed.²¹ Mr. W. is able to work, and seems to recognize now that he will have to find full-time work in order to support himself and his children. Mr. W. has attempted to make a successful business of running a sawmill that is owned by Ms. R. Mr. W., Ms. R. and the children live on a thirty acre parcel of land that is owned by Ms. R.'s business partner. While they were together, Mr. W. and Ms. R. moved the sawmill onto this property and built several other structures. Mr. W. no longer lives in the same building as Ms. R. and the children. Mr. W. lives in a building associated with the sawmill. Ms. R. and her partner rent out the other

¹⁵ Alaska Civil Rule 90.3(a)(4).

¹⁶ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁷ *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

¹⁸ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁹ *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987).

²⁰ See *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

buildings on the parcel. Ms. R. believes that Mr. W. is supposed to be paying rent to her partner. Mr. W. has been asked to leave the parcel. Ms. R. explained that she has told Mr. W. that he may take the sawmill with him.

Mr. W. admitted at the hearing that the sawmill has made very little money for the past few years, and has kept him employed less than 10 hours per week even during the summer, when the mill is the most active. Mr. W. explained that the lack of demand for the lumber the mill produces has kept the sawmill from being a going concern that provides him with a living wage. Net income from the sawmill in 2007, for example, was estimated at \$3,510.92.

Ms. R. explained that she works almost full-time at a local gas station. She believes that Mr. W. could find full-time minimum wage work if he sought it. Mr. W. did not dispute this. Mr. W. explained that rather than seek outside employment, he has been trying to make the sawmill more profitable, although admittedly with little success.

While it may have been reasonable for Mr. W. to focus on the sawmill business at some time, it is clear that by the time that the hearing took place, it was not reasonable for Mr. W. not to be diligently seeking full-time work away from the sawmill.

Ms. R. testified that the sawmill had never generated enough income to support the family. Perhaps Mr. W. can run the sawmill in addition to outside work, but whatever his choice, his children should not be called upon to subsidize an unreasonable decision to avoid full-time outside work through child support that is based on less than minimum wage earnings.

IV. Conclusion

Mr. W.'s monthly child support should be set at \$400 based on imputed full-time minimum wage earnings, plus a PFD.

V. CHILD SUPPORT ORDER

The Division's Amended Administrative Child and Medical Support Order issued on January 10, 2008 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. W.'s ongoing child support for C., Y., and Z. is set in the monthly amount of \$400, effective May 1, 2008.
2. Mr. W.'s child support arrears for C., Y., and Z. are set in the monthly amount of \$400 for April through December of 2007, \$400 for January through April of 2008.

²¹ Recording of Hearing.

3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for C., Y., and Z.

DATED this 2nd day of April, 2008.

By: Signed
Mark T. Handley
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 22nd day of April, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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