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

In the Matter of	)	
	)	
E. C.	)	OAH No. 22-0406-CSS
	)	

CORRECTED[1] DECISION AND ORDER

I. Introduction

This case concerns the establishment of E. C.'s child support obligation for his daughter, F. T.. The custodian of record, and F.'s mother, is O. T.. Mr. C. has appealed an Administrative Review Hearing Decision issued by the Child Support Services Division on March 24, 2022. That decision set his 2022 monthly support obligation for F. at $947 based on primary custody. It also calculated pre-order arrears for the period from August 1, 2020, through March 31, 2022.[2]

Mr. C. disputes the 2022 and ongoing support amount, as well as the pre-order arrears calculation for 2020 and 2021. He contends that he is already under a child support obligation for the four children he has with this ex-wife, K. B.. He indicates that the two orders (the one in this case and the one involving his ex-wife's children) should use the same or similar incomes as the basis for their calculations, which would significantly lower his monthly obligation for F..

Based on the record and after careful consideration, Mr. C.'s child support obligation for F. is set in the amount of $628 per month effective August 2020 through December 2020; $714 per month effective January 2021 through December 2021; $960 per month effective January 2022 through April 2022; $719 per month effective May 2022 through December 2022; and $720 per month effective January 2023 and ongoing based on primary custody.

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[1] The original decision issued on today's date incorrectly identified the minor child as F. T.. This corrected decision remedies that error by properly identifying her as F. T..

[2] This case has been on appeal from that decision since that time.

II. Facts and Procedure[3]

Mr. C. graduated high school in 2006. Following high school, he took some college general education courses, but has never obtained a college degree. Based on the record and Mr. C.'s testimony, he does not appear to be restricted by any physical or mental limitations.[4]

Immediately after high school, Mr. C. began working for Employer A, in Anchorage, Alaska.[5] Employer A is a construction contractor specializing in suspended acoustic ceilings and acoustic walls.[6]

The company is primarily owned by husband and wife, L. and Q. B.. L. B. possesses a 16% ownership interest in the company and is identified as its director, vice president, and a shareholder. Q. B. possesses a 74% ownership in the company and is identified as its director, president, and a shareholder. Mr. C. possesses a 10% ownership interest in the company and is identified as its secretary and a shareholder.[7]

Employer A is one of roughly eight businesses in the Anchorage area that performs suspended acoustic ceilings and wall contract work in the greater Anchorage area.[8] Mr. B. has been running the business for over 42 years. Employer A has been incorporated for over 20 years, and currently has five employees, including Mr. and Mrs. B.,[9] their daughter K., their son, and Mr. C.. Only three of Employer A's employees install ceiling acoustic tiles, including Mr. C. and the B.s' son.[10]

Mr. C. married L. and Q. B.'s daughter, K. B., in approximately 2012.[11] Mr. C. and K. B. ultimately had four children together. Three of those children are older than F., and one is younger.[12]

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3 The facts set forth in this section are largely uncontested. The testimony section of this decision will address the parties' respective testimony on many of the disputed facts. The discussion section of this decision will weigh the conflicting factual evidence, address witness credibility, and seek to resolve many of the conflicting factual issues based on the applicable law.

4 E. C. Testimony.

5 *Id.*

6 Q. B. Testimony.

7 *Id.*; *See also,* https://www.commerce.alaska.gov/cbp/main/search/entities.

8 Q. B. Testimony.

9 Throughout this decision and order, unless they are also referred to by their first names, Q. B. will be referenced as Mrs. B., and her daughter K. B. will be referred to as Ms. B..

10 Q. B. Testimony.

11 *Id.*; E. C. Testimony.

12 Exs. I and J; Kimberly Sledgister Testimony.

While he was married to Ms. B., Mr. C. fathered F. T.. F.'s date of birth is March 31, 2020. Her custodian is her mother, O. T.. Mr. C.'s paternity of F. was conclusively established by the Anchorage Superior Court on September 16, 2021.[13] In December 2021, Mr. C. and K. B. were divorced.[14]

In August 2020, the Division received an application from Ms. T. on behalf of F., for the establishment of child support from Mr. C..[15] It referred the parties for paternity establishment in December 2020.[16] It also sought financial and medical insurance information from Mr. C..[17] Initially, no information appears to have been received. In October 2021, the Division issued an order setting Mr. C.'s ongoing support obligation for F. at $1,340 per month based on Ms. T.'s primary custody.[18] This order was served upon Mr. C. on December 3, 2021, through his counsel at the time, Jacob Sonneborn.[19]

The Division subsequently received a request for an Administrative Hearing from Mr. C.. It also received Mr. C.'s 2020 W-2 wage and tax statement, and a printout of "Pre-paid Monthly Contributions" with a hand-written note indicating "health care deductions for minor children."[20] The Division subsequently requested Mr. C.'s income information from the Anchorage Superior Court and on September 10, 2021, received a paystub for Mr. C..[21] It also issued a request for employment information from Mr. C.'s last known employer, Employer A. No response was received.[22]

Two separate administrative review hearings occurred before the Division in January and February 2022. Mr. C. participated and was represented by his counsel, Mr. Sonneborn. Ms. T. also participated and was represented by her counsel, Justin Eschbacher.[23] Based on the information learned through those hearings, and the documentation the Division possessed at the

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13 E. C. Testimony; Q. B. Testimony; Ex. 3.
14 E. C. Testimony.
15 Ex. 1.
16 Ex. 2.
17 Ex. 2.
18 Ex. 4.
19 Ex. 4, p. 17.
20 Ex. 5.
21 Ex. 6.
22 Kimberly Sledgister Testimony.
23 *Id.*; Ex. 8, p. 1.

time, it issued an administrative review hearing decision and an amended administrative support order on March 24, 2022.[24]

The decision and order concluded that Mr. C. was voluntarily and unreasonably unemployed or underemployed. It also concluded that he owed past due support from August 1, 2020, through March 31, 2022, in the amount of $15,125, together with accruing interest. His ongoing monthly support was set at $947.[25] Mr. C. appealed the decision on April 22, 2022.[26]

Contemporaneous with filing his appeal, Mr. C. also provided the Division a 2021 Internal Revenue Service tax return transcript, U.S. Department of Labor statistics, a 2021 W-2, a copy of a life insurance policy information, and several letters explaining his position regarding his support obligations for F. and asking the Division questions.[27] The Division subsequently responded via email to many of the questions and issues raised by Mr. C. in the documentation accompanying his appeal.[28]

One of the primary contentions by Mr. C. initially, before, during and until shortly after the Division's administrative review hearing decision was issued in March 2022, is that because he was the primary caregiver for a child under two years of age,[29] it was inappropriate to impute income to him per 15 AAC 125.060(b).[30] Specifically, that regulation provides:

> The agency may not determine that a parent is voluntarily and unreasonably underemployed or unemployed if the parent is mentally or physically incapacitated or if the obligor parent is caring for a child under two years of age to whom the parents owe a joint legal responsibility.[31]

However, as the Division has appropriately and consistently noted, any reliance by Mr. C. on 15 AAC 125.060(b) is mistaken. This is because that regulation's reference to "parents," refers to parents of the child in the subject case, not a child under two years of age from a different relationship.[32] Despite initially raising this argument, it has not been asserted or relied upon by Mr. C. since approximately March or April 2022 and after obtaining new counsel.[33] As such, it appears that this argument was abandoned.

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24 Ex. 8.
25 Ex. 8.
26 Ex. 9.
27 *Id.*
28 Exs. 10 and 11.
29 Referring to his youngest child with K. B..
30 Ex. 5; Ex. 8, p. 2; Ex. 9, p. 18; Ex. 11, p. 1.
31 15 AAC 125.060(b).
32 Ex. 11, p. 1.
33 Ex. 5; Ex. 8, p. 2; Ex. 9, p. 18; and Ex. 11, p. 1; Entry of Appearance (November 21, 2022).

Next, the Division prepared an extract of information from the Alaska Department of Labor database regarding Mr. C.'s employer reported wages.[34] It also provided Mr. C. and Ms. T. hearing expense worksheets to be completed to the extent that financial hardship was intended to be raised as part of Mr. C.'s appeal.[35] It does not appear that any hearing expense worksheets were ever returned by the parties.

Following Mr. C.'s appeal, in April 2022, this matter was initially set for hearing on May 24, 2022.[36] At Mr. C.'s request, the initial hearing was rescheduled to June 7, 2022.[37] After another request by Mr. C., the hearing was rescheduled to July 18, 2022.[38] Following yet another request by Mr. C., the hearing was next rescheduled to occur on August 17, 2022.[39] The hearing was next rescheduled again at Mr. C.'s request to November 15, 2022.[40] Due to a scheduling conflict possessed by the Administrative Law Judge, the hearing was rescheduled to November 23, 2022.[41] On November 21, 2022, Mr. C.'s present counsel, Rhonda Butterfield, entered an appearance in the case and submitted a number of exhibits.[42] Ms. T. then requested to reschedule the hearing to have an opportunity to review the newly filed exhibits.[43] The case was reassigned to a different Administrative Law Judge due to a scheduling conflict and set for hearing on December 15, 2022.[44] However, because of a snowstorm occurring in the Anchorage area on that date, Mr. Eschbacher was unable to reach his office. As such, the hearing was again rescheduled, this time to December 22, 2022.[45]

A large portion hearing ultimately occurred on December 22, 2022. Ms. Butterfield appeared and participated on behalf of her client, Mr. C., Mr. Eschbacher on behalf of Ms. T., and Kimberly Sledgister on behalf of the Division. Testimony was provided by Mr. C. and his

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[34] Ex. 12.
[35] Ex. 13.
[36] Notice of Telephonic Hearing (May 10, 2022).
[37] Email from Mr. C. to the Office of Administrative Hearings (May 19, 2022); Notice of Rescheduled Hearing (May 25, 2022).
[38] Email from Mr. C. to the Office of Administrative Hearings (June 2, 2022); Notice of Rescheduled Hearing (June 14, 2022).
[39] Email from Mr. C. to the Office of Administrative Hearings (July 13, 2022); Notice of Rescheduled Hearing (July 18, 2022).
[40] Email from Mr. C. to the Office of Administrative Hearings (August 11, 2022); Notice of Rescheduled Hearing (August 18, 2022).
[41] Email from Office of Administrative Hearings to the Parties (November 1, 2022); Notice of Rescheduled Hearing (November 9, 2022).
[42] Entry of Appearance (November 21, 2022); Exhibit List (Exs. A – O) (November 21, 2022).
[43] Email from Justin Eschbacher to Office of Administrative Hearings (November 22, 2022).
[44] Notice of Reassignment and Order Rescheduling Hearing (December 5, 2022).
[45] Order Rescheduling Hearing (December 15, 2022).

witness, Q. B.. Testimony was also provided by Ms. Sledgister on behalf of the Division. Ms. T. did not offer any witnesses or testimony.

Before, during and after the initial hearing, Mr. C., through counsel, filed a pre-hearing brief, numerous exhibits and replacement exhibits. The Division's exhibits 1-13, and Mr. C.'s exhibits A-S, including the new and replacement exhibits, were all admitted into evidence. However, due to the new and additional exhibits offered by Mr. C., the need for the record to be supplemented by the Division, to allow time for closing arguments, and to afford the Division an opportunity to review and comment on the new exhibits, the hearing resumed on January 11, 2023.[46]

The Division timely supplemented the record with the information requested at the initial hearing, namely: 1) Alaska Department of Labor income figures for Mr. C. for a portion of 2015, and all of 2016 and 2017; and 2) U.S. Bureau of Labor statistics data regarding the average hourly wage in Alaska for workers performing the type of work Mr. C. is engaged in. It also provided a rebuttal exhibit consisting of a loan application previously filed by Mr. C..[47]

On January 11, 2023, the parties reconvened to conclude the hearing and conduct closing arguments. The Division offered limited testimony from Ms. Sledgister on Mr. C.'s newly offered exhibits. Additionally, Mr. C. offered testimony concerning the Division's documentation submitted following the initial hearing and regarding additional research he had performed concerning the availability of ceiling and tile installation work in the State of Alaska. He also sought to introduce Exhibits T, U and V, as documentary evidence supporting his testimony. Over the objection by Ms. T.'s counsel, both the testimony and evidence were allowed. The parties then provided closing arguments. The record was closed without further submissions by the parties.

III. Testimony Offered at Hearing

A. Q. B.

In her testimony, Mrs. B. described her role at Employer A as a shareholder, director, and its president and bookkeeper. She said that although the company has an accountant who prepares its taxes, she is the person solely responsible for its bookkeeping. She confirmed that

46 Order Regarding Continuation of Hearing (December 23, 2022).
47 Division Submission to the Record (December 28, 2022) and Exs. 14-16.

both she and her husband make the employment and management decisions concerning the company.[48]

Mrs. B. also testified that Mr. C. is presently identified in the State of Alaska, Division of Corporations' records as a 10% shareholder and secretary of the company. He was made an officer of the corporation and given a 10% ownership interest in the entity when he married her daughter in approximately 2012. She testified that in 2021, the company had not disbursed any monies to Mr. C. based on his ownership interest and she was uncertain whether he had ever received monies from the company based solely upon his ownership interest. Mrs. B. also testified that Mr. C. never paid for or made any monetary investment in the business in exchange for his ownership interest.[49]

Mrs. B. said that it has been her and her husband's intent since Mr. C. and their daughter divorced to remove him as an officer of the company and eliminate his ownership.[50] However, despite the couple's divorce having been finalized in December 2021,[51] Mrs. B. acknowledged that she and her husband have still not taken those steps. But she claimed that just as soon as she finished testifying, she was going to follow up and call their attorney and ask him to do so.[52]

On cross examination, Mrs. B. acknowledged that as of the company's most recently filed 2023 biannual report, she and her husband had affirmatively indicated on that report that Mr. C. continues be the company's secretary and 10% shareholder. When she was questioned about how much Mr. C. would be given for his 10% ownership interest in the entity when it was changed, Mrs. B. said that she and her husband would let their attorney figure that out.[53]

There was also considerable testimony offered by Mrs. B. regarding the huge negative impact of the COVID-19 virus and pandemic on the company. She testified that because of the pandemic, the company has lost a significant amount of work and contracts. She said it was struggling to stay afloat, and that she and her husband were attempting to stay solvent and in business until this coming summer of 2023. She indicated that it was likely they would close the business at that time. When asked whether she knew what the company's profit and loss

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48 Q. B. Testimony.
49 *Id.*
50 *Id.*
51 E. C. Testimony.
52 Q. B. Testimony.
53 *Id.*

statements reflected either currently, for 2022, 2021, or 2020, she said she did not. She said that would be a question for the company's accountant.[54]

Mrs. B. further indicated that although no employees had to be let go by the company because of the pandemic, they frequently had their work hours reduced and some employees collected unemployment for a couple of weeks at a time.[55] That said, Mrs. B. also confirmed that as of the date of her testimony, the company only had five employees - she and her husband, their son and daughter K. (Mr. C.'s ex-wife), and Mr. C.. She said that the business had applied for and received roughly $165,000 in Paycheck Protection Program loans during the Pandemic.[56]

When asked whether the company had been profitable during various years, including 2021, Mrs. B.'s answers were evasive, at one point even asking whether the hearing was about the company or Mr. C.. When asked whether there was ever a year that the company had not shown a profit, Mrs. B. said that she was uncertain, and the question would have to be directed to the company's accountant.[57]

Mrs. B. also testified concerning Mr. C.'s rate of pay. She said that until Mr. C. divorced her daughter, he had been paid at a higher rate of pay because of their marriage than he otherwise would have been paid. She indicated that until the week ending April 23, 2022, Mr. C. had been paid at the rate of $40 per hour for non-Davis-Bacon projects, and $65.49 per hour for Davis-Bacon jobs.[58] A Davis-Bacon job is when work is performed under a state or federal contract requiring that workers performing the work be paid "prevailing wages." She testified that when Employer A secured contracts to perform such work, its workers would receive a substantially higher rate of pay. In 2018 and 2019, the company had numerous "Davis-Bacon" jobs.[59]

Beginning in April 2022, Mrs. B. testified that Mr. C.'s hourly rate was reduced to $22 per hour. That reduction was alleged to have occurred because of two factors. First, Mrs. B. testified that the company could not afford it. Second, she and her husband were infuriated

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54 *Id.*

55 *Id.* Mrs. B. also testified that although the company now only has five employees, prior to or shortly following the Pandemic, it had as many as 20 employees. Q. B. Testimony.

56 *Id.*

57 Q. B. Testimony.

58 While Mrs. B. did not indicate and/or could not recall when Mr. C. began working at $40 per hour, she gave the impression that he had earned this rate of pay for many years, including long before the years at issue in this case.

59 Q. B. Testimony.

about the circumstances of the couple's divorce. While they were loath to fire Mr. C. because of the difficulty in locating and training skilled workers, on the other hand, they were no longer willing to pay him at a higher rate as they did when he was a family member. As such, she said that Mr. C. was forced to accept the lower rate of pay, without negotiation, or the company would have terminated his employment. When asked how she and her husband arrived at the rate of $22 per hour, Mrs. B. indicated that it was based on prevailing wages for similar workers in the Anchorage area. When asked whether it was likely that Mr. C. could anticipate any sort of raise in the future, she answered "no." She also confirmed that he receives no health or retirement benefits.[60]

Relevant to Mrs. B.'s testimony on this point, during the hearing, Mr. C. offered into evidence Exhibit 1, which purportedly reflected U.S. Dept. of Labor statistics showing the mean hourly wage of $23.85 paid to Business A in Alaska. However, this document lacked any date, year reference, or any source information other than the description assigned to it in its electronic form.[61]

Mrs. B. testified that at no point during his tenure with the company has Mr. C. ever been terminated. When initially asked about when his rate of pay was reduced from $40 per hour to $22 per hour, Mrs. B. said she could not recall without looking and that perhaps it was in 2020. She was then given an opportunity to refresh her memory by reviewing the company's payroll records. When she did so, she confirmed that Mr. C. was paid at the hourly rate of $40 per hour on non-Davis-Bacon jobs through May 2021. From that point through September 5, 2021, he performed work on Davis-Bacon jobs and received $65.49. It was then not until April 2022, that his rate of pay was reduced to $22 per hour.[62]

From September 5, 2021, through April 23, 2022, Mr. C. did not work and received no pay. Mrs. B. initially testified that this was because there was no work during this period. When she was then asked to confirm whether she, her husband, her son, and her daughter worked during this period, she confirmed that they had. She said there had been enough work for them, to some extent, but there had not been any work available for Mr. C..[63]

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60 *Id.*
61 Ex. 1.
62 Q. B. Testimony.
63 *Id.*

Mrs. B. was questioned about when her daughter's divorce with Mr. C. had occurred, she said that she could not recall. When asked whether she and Mr. C. were cordial, Mrs. B. initially refused to answer before ultimately claiming that the two were amicable for the sake of their children. Next, she was questioned about whether the two still lived together. She was initially reluctant to answer before indicating that, to her knowledge, they do not. When asked about where Mr. C. was living, she was again reluctant to answer before eventually providing a physical address. When questioned about whether Mr. C. was renting at this location or owned it, she confirmed that he was renting. She was then asked if she knew who Mr. C.'s landlord was and she confirmed he was living with her son and that her son owns the property. Mrs. B. was asked whether Mr. C. uses the company's truck for his own personal use; she said he is not supposed to but that if he needs it, the truck is there for him.[64]

Mrs. B. confirmed that hanging ceiling acoustic tiles is skilled labor and that not just anyone can perform this type of work. She said that Mr. C. has been learning the trade from her husband since graduating high school. Her son also performs this same work for the company, and that he has consistently been paid at the rate of $43.34 per hour. Her son has not worked for the company as long as Mr. C.. He is, however, a union member and she testified that this is why he is paid at a higher rate of pay. She acknowledged that regarding ceiling tile work, her son and Mr. C. are likely equally skilled or qualified. Although she said her son had journeymen and union training, this occurred largely outside of the specialty of ceiling tile work. Further, although a precise number of years was not indicated, Mrs. B.'s testimony suggested that Mr. C. had been performing ceiling tile work for a longer period than her son had.[65]

Finally, Mrs. B. was asked whether her and her husband had ever offered their business for sale as an alternative to simply closing its doors this coming summer as she testified was their intention. She responded in the negative and posed the question, who they would sell it to or who would buy it? She acknowledged that the business has a name and reputation and implied that these may have some value but indicated that she would not know how to go about selling it.[66]

B. E. C.

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[64] *Id.*
[65] *Id.*
[66] *Id.*

In his testimony, Mr. C. confirmed that he graduated high school in 2006, and has been working for Employer A ever since. He has never worked for any other employers and does not possess any other work experience. He also denies having any experience as a project manager for Employer A. He confirmed that the rates of pay he has received from Employer A are as Mrs. B. testified and that the dates she provided regarding when those rates of pay changed are also accurate.[67]

Mr. C. acknowledged that from 2016 through 2018, he earned approximately $100,000 annually from Employer A.[68] He also confirmed that Exhibit B contains all his paystubs from 2020, and that for that year, his total income was only $69,250. He said that in 2020, there were times when there was simply no work available.[69] He further confirmed that Exhibit E contains all his paystubs and represents the entirety of his income for 2021. His last paystub for that year was September 10, 2021, and his income for the year was $6,420.[70] He testified that Exhibit P represents his paystubs for all of 2022, except the last pay period, which had not yet been issued as of the date of the hearing. As Exhibit P reflects, and as he testified, he anticipates earning $27,280 for 2022.[71]

Mr. C. testified that his last paycheck in 2021 was on September 10, 2021. From that point up until April 17, 2022, he did not work.[72] Instead, he stayed at home and took care of his four kids with K. B. while she worked.[73] He testified that during that period, he had not been fired from Employer A. Instead, there was simply a lack of work for him, as Mr. and Mrs. B. were allocating the scant jobs that were available during that period to themselves and likely to their son and daughter K.. He also never applied for unemployment, including from September 2021 through April 2022, because he did not realize it was available to him. He said he was under the belief that unless he had paid into unemployment, he was ineligible for unemployment. Nevertheless, he acknowledged that he was aware that other workers at Employer A routinely collected unemployment when work was not available.[74]

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67 E. C. Testimony.
68 *Id.*
69 *Id.;* Ex. B.
70 E. C. Testimony; Ex. E, p. 12; Ex. F.
71 E. C. Testimony; Ex. P.
72 E. C. Testimony; Ex. E, p. 12; Ex. K, p. 1.
73 E. C. Testimony.
74 E. C. Testimony.

Mr. C. testified that throughout the period from September 10, 2021, through April 17, 2022, he frequently asked Mr. and Mrs. B. for work, but that they said none was available. He also testified that he looked for work elsewhere. He said he called three separate potential construction employers about work. Two of them were not hiring, but the third was soon to be hiring. However, before that occurred, he went back to work for Employer A in April 2022. This was a result of him effectively begging Mr. and Mrs. B. for work in April 2022, and to help him get out of the child support hole that he was in. Ultimately, he testified that they agreed, but at the reduced rate of $22 per hour.[75]

Mr. C. acknowledged that he never submitted any actual applications for work to any prospective employers from September 2021, through April 2022, but asserted that employers in his line of work do not routinely advertise for work or accept applications. Instead, they simply expect to be contacted as he had done. However, in subsequent testimony at the follow-up hearing in this case, Mr. C. testified that from 2015 through January 10, 2023, there was only one job that had become available for ceiling tile installation work in all of Alaska. Mr. C. made this contention based on research he had performed and after contacting the Alaska Department of Labor.[76] He subsequently admitted however, that simply because a business may not have advertised for such a position with the Alaska Department of Labor, does not mean that such positions were not available throughout Alaska. This is because, just as he had testified, many such employers do not formally advertise for such positions. He had also admitted in earlier testimony that he had not contacted any of the other seven or eight acoustic ceiling tile and wall installation businesses in the Anchorage area about potential work. He claimed this was because most of those businesses either had few if any employees or had been started by previous employees of Employer A and were its competitors.[77]

When questioned about whether he considered applying for work outside of the field, or going back to school, Mr. C. testified that school would be too expensive, he didn't have the money and that he would be unable to afford child support during the interim. As to working in another field, he said he was not considering doing so because his only experience was in performing acoustic ceiling tile and wall type of work.[78]

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75 *Id.*

76 *Id.;* Exs. T - V.

77 E. C. Testimony.

78 *Id.*

Mr. C. acknowledged that he had previously been made a 10% owner and secretary of the Employer A business entity. However, he confirmed that he had not made any financial investment in the company, and until the hearing, had not been aware that he was still listed as a secretary and shareholder of the company. He said he did not expect to receive anything based on his ownership interest in the entity.[79]

Mr. C. further testified that his and K. B.'s divorce was finalized in December 2021. He said he is on amicable terms with her for purposes of the couple's children. He denied being in any sort of relationship with her beyond that, intimate or otherwise. He testified that they do not live together. Instead, he is currently living "with someone," but is not paying any rent or utilities.[80] He denies owning a vehicle and said that he merely gets rides from others. He denies using the company vehicle for personal use. Mr. C. testified that he has one credit card that is "maxed-out" with a balance of approximately $14,000. He is unaware of what the minimum payment is required on the card. Mr. C. also confirmed that his only source of income was from Employer A.[81]

As Mr. C. testified, following his divorce with Ms. B., the Superior Court issued a child support order in the couple's case involving their four children on January 5, 2022.[82] The order established a total monthly obligation for Mr. C. for those children at $962.28, together with an obligation to provide for half of the monthly health insurance costs for the children in the amount of $225. The effective date of the order was January 1, 2022.[83]

Shortly thereafter, on March 24, 2022, the administrative review decision was issued in this matter. It calculated Mr. C.'s 2020 income based on his actual earnings for the year and after providing him standard deductions for Federal income tax, Social Security, and unemployment insurance. This resulted in an adjusted annual income of $56,207.28.[84] However, for 2021, the Division calculated Mr. C.'s income by averaging his prior 2 years of complete income for which records were available, 2018 and 2020, resulting in a gross income

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79 *Id.*

80 Mrs. B. confirmed in her testimony that Mr. C. lives with her son in a home her son owns. Q. B. Testimony.

81 E. C. Testimony.

82 *Id.;* Ex. I.

83 Ex. I.

84 Ex. 8, p. 8.

of $86,154.41. This ultimately justified a monthly support obligation for F. for the year of $762.[85]

As Mr. C. testified, despite adamantly disagreeing with the Division's March 24, 2022, administrative review decision and its calculation of his income used as the basis for his support obligation for F., he nevertheless communicated this information to his ex-wife. Shortly after doing so, Ms. B. sought modification of the initial child support order issued by the Superior Court in the parties' divorce regarding their children. The resulting modified order increased the support obligation owing by Mr. C. using income imputed to him for 2021 by the Division and its administrative review decision. This in turn resulted in an increase in Mr. C.'s support obligation for his children with Ms. B. from a monthly support obligation of $1,187 to $2,330.[86]

Mr. C. also testified concerning appropriate deductions in calculating his child support obligations for F.. First, he claimed he was entitled to a deduction of $276 per month against the obligation owing for F. based on his portion of health care coverage he was ordered to pay by the Superior Court in his case with Ms. B..[87]

Second, he claims he was entitled to deductions for retirement contributions. He testified that he has three retirement accounts. One is a whole life insurance policy with Insurance Company A, with himself named as the insured, and paying a death benefit of $100,000. For this policy (# 00 000 000), which became effective on January 21, 2020, Mr. C. testified that he pays $81.50 per month, for a total of $978 annually.[88] He also claims a deduction for a whole life insurance policy with Insurance Company A, with himself named as the insured, and paying a death benefit of $100,000. For this policy (# 00 000 000), which became effective on March 12, 2020, Mr. C. testified that he pays $72.68 per month, for a total of $872.16 annually.[89] Finally, Mr. C. testified that he claims a deduction for a Roth Contributory IRA Retirement Account A (# 0000-0000). He pays $200 per month into this account. He began paying into the account in May 2022. As of October 31, 2022, it had a balance of $1,200.52.[90]

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85 *Id.*
86 E. C. Testimony; *Compare* Ex. I *with* Ex. J.
87 E. C. Testimony.
88 *Id.;* Ex. Q.
89 E. C. Testimony*;* Ex. R.
90 E. C. Testimony; Ex. S.

Mr. C. testified that his motivation in creating the life insurance policies and retirement accounts was to look ahead, and plan for the future. He contends that they should all be considered as eligible deductions under Civil Rule 90.3 because he contributes to them for purposes of retirement, and they can be borrowed against. He acknowledged that his contributions to the accounts are made with income he receives from Employer A after paying taxes on that income. However, he contends they constitute eligible deductions because they are for purposes of retirement and because once they are paid out, they will be tax-free after that point.[91]

In analyzing the years at issue in this case, Mr. C. testified that for 2020, it is appropriate to use his actual income of $69,250. When this is done, and after including the Permanent Fund Dividend for which he was eligible (resulting in a gross income of $70,242), and after providing deductions for the above-asserted retirement and medical contributions, he contends that his monthly support obligation for F. for the portion of the year he is obligated, is $597.[92]

Mr. C. acknowledges that for 2021, it is appropriate that income be imputed to him. He contends that it is reasonable to impute income to him at the rate of $40 per hour and 40 hours per week, for 24 weeks, through September 10, 2021, resulting in an income of $38,400 for the year to that point. Then, following that, he contends it is appropriate to impute income to him at the rate of $22 per hour, and 40 hours per week, for the remaining 26 weeks in the year. This results in a total imputed income for 2021 of $61,280. He contends that when his PFD is factored in (resulting in a gross income for the year $62,394), together with his deduction for his other children, and his retirement are factored in, his 2021 obligation for F. is $546.[93]

For 2022, Mr. C. testified that is appropriate to use his actual earnings anticipated for the year at his current wage of $22 per hour. When this is done and taking into account the amount anticipated for his final paycheck, he contends he will receive $27,280 for the year as well as a PFD (resulting in a gross income of $30,564). When the original support order for his other children is taken into account for January through April 2022, together with claimed deductions for medical insurance and retirement contributions, he asserts that his monthly support obligation for F. for the year is $228.[94] When the same information is calculated for May

[91] E. C. Testimony.
[92] *Id.;* Exs. C and D.
[93] E. C. Testimony; Exs. E, G and H.
[94] E. C. Testimony; Exs. I - L.

through December 2022 and taking into consideration the modified support order issued by the Superior Court for his other children, his monthly obligation is $50.[95]

Finally, for 2023, Mr. C. testified that it is important to him that the two child support orders, the one in this case and the one involving his children with Ms. B., be made consistent and utilize consistent incomes. He has communicated with his ex-wife regarding the same and testified that she agrees to this approach. As to the amount of income that should be used, Mr. C. proposes that it is appropriate to use his current hourly rate of $22, multiplied by 40 hours per week and 50 weeks per year. When this occurs, and if the same income is used to calculate the support obligation for his children with Ms. B., and by taking into consideration his PFD, and the above-referenced deductions, it results in a gross annual income of $45,114 and monthly support obligation for F. of $279.[96]

Before paternity was established in this case on September 16, 2021,[97] and in fact, before F. was even born, Mr. C. acknowledges that once he learned Ms. T. was pregnant, he contacted her in November 2019, and suggested three separate options concerning the child: 1) giving the baby up for adoption; 2) allowing him and his wife to adopt the child and raise it as their own, terminating Ms. T.'s parental rights; or 3) for Ms. T. and her husband to adopt the child and to terminate Mr. C.'s parental rights.[98]

Mr. C. acknowledged that at least two of the options he provided to Ms. T. would have resulted in elimination of any potential child support obligation by him. However, he testified that cutting off his child support obligation was not his only focus in providing Ms. T. these options. Instead, he was also concerned for the child's well-being and felt the child would benefit by being raised in an intact family. This said, despite F. being born on March 31, 2020, Mr. C. indicated that as of the date of the hearing in this case, he had never met F..[99]

C. Kimberly Sledgister

As Ms. Sledgister testified, Mr. C. appeared and testified at the two administrative review hearings before the Division. At those hearings, his primary focus in asserting that the Division's calculations were incorrect was his reliance on 15 AAC 125.060(b). In doing so, he

95 E. C. Testimony; Exs. I - K and M.
96 E. C. Testimony; Exs. N and O.
97 E. C. Testimony; Q. B. Testimony; Ex. 3.
98 E. C. Testimony; Ex. 9, p. 12.
99 E. C. Testimony.

argued that the Division may not determine that a parent is voluntarily or unreasonably underemployed or unemployed if the obligor parent is caring for a child under two years of age.[100] However, as Ms. Sledgister testified, Mr. C.'s reliance on that regulation was in error. This is because the regulation's reference to "parents," and "child" refers to parents of the child for whom the support is being calculated in that specific instance, not to parents of another child from a different relationship.[101]

As Ms. Sledgister further testified, there were several things that made the calculation of Mr. C.'s child support obligation more difficult in this case. First, there was little if any response from Mr. C. or his employer when the Division requested earnings information from them. They were simply not very forthcoming with that information, and this made calculation of income in this instance difficult.[102] Further, although there had been income information for Mr. C. previously reported by Employer A to the Alaska Department of Labor, that information appeared inconsistent and incomplete. Specifically, the information reported by Employer A only included Mr. C.'s income for the last quarter of 2015, all of 2016, and 2017, and only the first quarter of 2018. No other information had been reported since the first quarter of 2018. Based on this fact, she could only conclude that Employer A has not since reported any such information to the Department of Labor.[103]

Ms. Sledgister said that it was this initial lack of financial information, the lack of explanation from Mr. C. regarding his job duties, and his ownership and shareholder status in Employer A, that caused the Division to impute income to him at rates for a construction and/or project manager in the original administrative order. While it appears that this position was changed by the time of the March 24, 2022, administrative review decision, imputing income to Mr. C. based on his status as a ceiling tile installer, the Division's supplementation of the record in fact supports its original position that Mr. C. should potentially be construed as a project manager.[104]

This is because, as that documentation confirms, Mr. C. submitted an Consumer Loan Application A on June 15, 2018. In it, he identifies that he has 14 years of experience as a

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100 Ex. 5; Ex. 8, p. 2; Ex. 9, p. 18; Ex. 11, p. 1.
101 Kimberly Sledgister Testimony; Ex. 11, p. 1.
102 Kimberly Sledgister Testimony.
103 *Id.*
104 Exs. 4; Division Submission to the Record (December 28, 2022) at 1; Ex. 15, 2.

Project Manager for Employer A. Her further identifies his salary as $6,400 per month ($76,800 per year).[105] Based on 50 weeks at 40 hours per week, this equates to roughly $38.40 per hour. Per U.S. Bureau of Labor Statistics information for the State of Alaska as of May 2021, Project Management Specialists in Alaska, earn an average wage of $45.63 per hour.[106] Business A in Alaska during this same period earn an average wage of $26.78 per hour.[107]

Nevertheless, as Ms. Sledgister also testified, despite the general lack of income information received from Mr. C. or his employer, what the Department of Labor's records do reflect is that Mr. C. received the following income in the following years from Employer A:

Year	Amount	Total for the Year
2015 (1st quarter)	$29,944.53	Incomplete Data
2016 (1st quarter)	$22,661.50	
2016 (2nd quarter)	$25,884.76	
2016 (3rd quarter)	$27,533.99	
2016 (4th quarter)	$20,653.46	$96,734
2017 (1st quarter)	$27,064.89	
2017 (2nd quarter)	$29,495.11	
2017 (3rd quarter)	$26,210.22	
2017 (4th quarter)	$21,553.75	$104,324
2018 (1st quarter)	$8,925.00	Incomplete Data[108]

As she further testified, for the portions of the year at issue in 2020, the Division calculated Mr. C.'s wages based on the W-2 he provided with his appeal.[109] As she explained, his income and tax statement identifies that he earned $69,250 for the year. After including his Alaska PFD his total gross income for the year is $70,242. After providing for his monthly allowable deductions, he is calculated to have an adjusted annual income in 2020 of $56,207.28.

105 Ex. 16.
106 Ex. 15, p. 2.
107 *Id.* at 11.
108 Ex. 14; Kimberly Sledgister Testimony.
109 Exs. 5 and 8; Kimberly Sledgister Testimony.

When he is given a deduction for his 3 prior children in the amount of $1,546, his monthly child support obligation for F. for the year is $628.[110]

Ms. Sledgister explained that Mr. C.'s support obligation for 2021 was calculated similarly to 2020. However, the Division did not possess any current income information for that year from Mr. C., the Department of Labor, or as request from Employer A.[111] It also concluded that he was voluntarily unemployed for a portion of the year.[112] As such, it relied on the last year of Department of Labor data it possessed for Mr. C., 2018, showing that he had income in that year of $104,324. It combined that information with the other most recent year it possessed, Mr. C.'s W-2 information showing that he had reported earnings in 2020 of $69,250. When these amounts were combined and averaged, they resulted in extrapolated earnings for the year of $86,154. After including his Alaska PFD his total gross income for the year became $87,268. Subtracting his monthly allowable deductions, including $1,887 for his 3 prior children, results in a 2021 adjusted annual income of $68,257, and a monthly child support obligation for F. of $762.[113]

For 2022, Ms. Sledgister testified that the Division also found Mr. C. voluntarily unemployed and underemployed for a portion of the year. As such, it again used the same income information as applied in 2021. This was also because this was the best information it had at the time. Therefore, once again, Mr. C. was claimed to have extrapolated earnings for the year of $87,268.[114]

As Ms. Sledgister pointed out, however, there are a couple of things to note as to the Division's calculation for Mr. C.'s support obligation for 2022. First, to supplement the scant income information that Mr. C. and his employer provided, the Division subpoenaed Mr. C.'s bank records. Mr. C. objected claiming he was simply a co-signor on the account subpoenaed, and the deposits reflected in the account were from his ex-wife, not him, and that he and his ex-wife had not yet adequately separated all their banking account information.[115] Ms. Sledgister confirmed at hearing, however, that the Division recognized this fact in advance of relying on any of this information in its Administrative Review Hearing Decision. As such, this is yet

110 Ex. 8 at pp. 2, 11-14, 21; Kimberly Sledgister Testimony.
111 Kimberly Sledgister Testimony.
112 Ex. 8 at pp. 2-3, 15-18, 21.
113 Ex. 8 at pp. 2, 15-18, 21; Kimberly Sledgister Testimony.
114 Ex. 8 at pp. 2-3, 19-21; Kimberly Sledgister Testimony.
115 Kimberly Sledgister Testimony.

another reason why the Division was forced to use Mr. C.'s extrapolated income information from 2021 in calculating Mr. C.'s 2022 support obligation.[116]

Second, in preparing for the hearing in this case, Ms. Sledgister realized that the deduction given for Mr. C.'s support obligation for his other children in 2022, was incorrect. As she explained, initially the Division did not use the same three prior children deduction as it had in 2020 and 2021. This is because as of 2022, there was a Superior Court order addressing Mr. C.'s child support obligation for his three prior children and his subsequent child, all fathered by him with Ms. B.. The Division used as a deduction from his annual income Mr. C.'s support obligation from that order for all four children, totaling $962.[117]

However, because Mr. C. is only entitled to a deduction for children from other relationships born prior to F., and the Superior Court's order included the three prior born children, and a child subsequently born to Mr. C. and Ms. B., it was inappropriate for the Division to apply that amount from the order as a deduction to Mr. C..[118] Instead, only a three-children deduction should have been applied.[119]

Ms. Sledgister testified that another error arose because the Superior Court's child support order for Mr. C.'s other children also included an addition to Mr. C.'s monthly support obligation for his required monthly contribution to the health insurance for those children. However, once again, Ms. Sledgister testified that no such deduction is allowed as applied to F.. This is because in this instance, there is no evidence that Mr. C. has obtained health insurance or actually paid the amounts ordered and these health insurance adjustments are not properly construed by the Division as child or spousal support under Rule 90.3(a)(1)(C)(i).[120] Therefore, the Administrative review decision's calculation of the support obligation owing for F. from 2022 forward was inflated and incorrect in that it applied for too great a deduction in favor of Mr. C.. Instead of a deduction of $962 as was given,[121] he only should have been entitled to a deduction of $676.[122]

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116 Kimberly Sledgister Testimony.
117 Ex. I; Kimberly Sledgister Testimony.
118 Civil Rule 90.3(a)(1)(C)(i); Ex. I; Kimberly Sledgister Testimony.
119 Civil Rule 90.3(a)(1)(C)(i); Kimberly Sledgister Testimony.
120 *Id.*
121 Ex. 8, pp. 19-21; Kimberly Sledgister Testimony.
122 Kimberly Sledgister Testimony.

A third complication as to the 2022 calculations is the fact that after the Administrative review decision was issued, Ms. B. went back to the Superior Court asking that Mr. C.'s support obligations for the couple's children be further modified based on the income imputed to Mr. C. by the Division in this case.[123] When this occurred, it resulted in an order from the Superior Court modifying Mr. C.'s original child support order. Based on that modified order, the amount of the deduction Mr. C. is entitled based on his three prior-born children with Ms. B. increased to $1,882. That order was issued on April 18, 2022 and has an effective date of May 1, 2022.[124] Therefore, Ms. Sledgister testified, Mr. C.'s 2022 support obligations for F. should be based on a deduction for prior-born children from January through April 2022, in the amount of $676 per the original Superior Court order. And from May 2022, moving forward, should be based on a deduction of $1,882, per the modified Superior Court order.[125]

Finally, Ms. Sledgister testified that she has since reviewed the various exhibits and calculations provided by Mr. C. and his counsel immediately before, during and after the December 22, 2022, hearing. Based on that information, and in addition to the issues and concerns raised above, she also testified regarding some perceived shortcomings in those calculations.[126]

First, she notes that in 2021, Mr. C. included retirement contributions in his calculations. However, the Division has never been provided any such proof of the contributions.[127]

Second, the proposed calculations include adjustments for his required contributions toward medical insurance for his other children and as per the Superior Court orders.[128] However, as Ms. Sledgister testified the Division does not construe those as allowable deductions**.** Rather than being an allowable health insurance deduction, they are instead viewed as "health share accounts." As she testified, under Rule 90.3(a)(1)(C), deductions are allowed for "spousal or child support" from other relationships. Health share accounts are not construed by the Division as spousal or child support under the Rule.[129]

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123 Kimberly Sledgister Testimony; E. C. Testimony.
124 Kimberly Sledgister Testimony.
125 Exs. I, and J; *Id.*
126 Kimberly Sledgister Testimony; *See* Exs. C, D, G, H, L - O.
127 Kimberly Sledgister Testimony.
128 Exs. I and J.
129 Kimberly Sledgister Testimony.

Third, as to the alleged retirement contributions contained in Exhibit S, Ms. Sledgister said that the Exhibit only references contributions alleged to have occurred from May through October 2022. If they are to be properly considered, the Division needs proof that they continued from November 2022 through December 2022 and into January 2023.[130]

Fourth, Ms. Sledgister testified that some of the claimed contributions to the Roth A retirement account referenced in Exhibit S do not match the $200 per month deductions referenced in the calculation worksheets provided by Mr. C..[131] As such, the Division needs proof as to what the payments were, and the deductions claimed need to match the exhibits or proof provided. Ultimately, this cannot exceed 7% of his gross earnings.

Fifth, Ms. Sledgister said that the PFD amount applied in the child support calculator for 2023 has recently been updated to $2,622. That is the amount the Division is using for calculations into the new year.[132] As such, that is the amount that Mr. C. will need to use when performing calculations and Ms. Sledgister implied that this may not have occurred, at least as to Exhibits N and O.[133]

Sixth, Ms. Sledgister addressed Mr. C.'s deduction of claimed "retirement" contributions based on whole term life insurance policies he has held from 2020 until early 2022.[134] However, she testified that she is not aware of any authority which would allow life insurance policies to be approved as an eligible deduction for purposes of child support calculations.[135]

During cross examination, Ms. Sledgister was asked whether she acknowledged that, after the pandemic struck in 2020, it caused broad economic impacts to a lot of people. She testified that this fact was undoubtedly true. However, important to this case is that Mr. C. never indicated at any point, and despite repeated requests, that the pandemic had anything to do with his unemployment or change in earning capacity. Instead, he was not forthcoming with information and to the extent he did provide information to the Division, it lacked any suggestion that his unemployment or underemployment was due to the pandemic.[136]

IV. Discussion

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130 *Id.*
131 *Compare* Ex. S *with* Exs. C, D, G, H, L – O.
132 Exs. N and O.
133 Kimberly Sledgister Testimony.
134 Exs. Q and R; Kimberly Sledgister Testimony.
135 Kimberly Sledgister Testimony.
136 *Id.*

A. Applicable Law and Preliminary Issues

Before analyzing the amount of Mr. C.'s correct child support obligations for F., it is first necessary to address several factual and legal issues. These include the proper legal analysis and basis for a child support order under Civil Rule 90.3, a credibility analysis of the witnesses and their testimony, an analysis of whether Mr. C. has been voluntarily unemployed or underemployed and the allowable deductions potentially applicable in this case.

1. Civil Rule 90.3

A parent is obligated by both statute and common law to support his or her children.[137] Child support obligations are determined under Alaska Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."[138]

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 specified mandatory deductions, such as federal, state, and local income taxes, and Social Security.[139] The regulations implementing this rule direct that a parent's ongoing support obligation is based on "the total annual income the parent is likely to earn or receive when the child support is to be paid."[140]

Civil Rule 90.3(a)(1)(C) also provides that a parent who pays support for a prior child from another relationship is entitled to a deduction from the parent's income in calculating the support obligation for the younger child. The unchallenged evidence in this case establishes that Mr. C. has three other children older than F. and for whom he is obligated to pay support.[141] However, as Ms. Sledgister has correctly noted, before those orders were entered, Mr. C. was simply entitled to a deduction based on his calculated amount of the obligation for those children under Rule 90.3. After the child support orders were entered, he was then entitled to a deduction based on the support obligation set forth in those orders for the three prior children.[142]

Calculating child support in this type of case is a multistep process. First, it is necessary to calculate the amount of support for Mr. C.'s prior children with Ms. B., either before support

137 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.
138 Civil Rule 90.3, Commentary I.B.
139 *See* 15 AAC 125.010 (adopting Civil Rule 90.3 by reference).
140 15 AAC 125.050 (c).
141 Exs. I and J.
142 Rule 90.3(a)(1)(C).

obligations were created by the Superior Court and per Rule 90.3(a)(1), after such support obligations were entered, and then per the Superior Court orders in that case.

Second, Mr. C.'s adjusted annual income is determined by including a deduction from his income for supporting his three older children. Once again, however, because Mr. C. is only entitled to a deduction for three of his four children with Ms. B., in calculating the appropriate deductions, one must be mindful that Mr. C. may be entitled to less of a deduction than the total dollar amount set forth in the orders by the Superior Court.[143]

Accordingly, before the first of the Superior Court's orders in January 2022, Mr. C.'s prior children support deduction is simply calculated by determining his support obligation for three children under Rule 90.3(a)(1), using his applicable income for the period. Between January 2022, and April 2022, his prior children support deduction is determined by applying the Superior Court order in Exhibit I as explained above using his applicable income for the period. Finally, beginning from May 2022, onward, Mr. C.'s prior children support deduction is appropriately determined by applying the Superior Court order in Exhibit J as explained above using his applicable income for the period.

The third and final step requires determining the amount of support owing for F. for the various periods involved taking into consideration Mr. C.'s annual income imputed or otherwise, and the above-referenced prior children support deductions. In doing so, Mr. C., as the parent challenging a child support calculation under Rule 90.3, has the burden of proving by a preponderance of the evidence that the support calculation is incorrect.[144]

An obligor parent also has the burden of proving his or her earning capacity. Where an obligor does not provide information about his or her income, the Division may calculate the support obligation on an "expected annual income" based on sources such as the parent's income to date, prior income history, job skills, and "the average wage or salary available to a person in the person's particular profession or occupation."[145]

In cases established administratively by the Division, it collects support from the date the custodial parent requested child support services, or the date public assistance was initiated on

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143 This is because the superior court's order involved four children and Mr. C. is only entitled to a deduction under Rule 90.3(a)(1)(C), for his prior children. Exs. I and J.

144 15 AAC 05.030(h); 2 AAC 64.290(e).

145 15 AAC 125.050(c)(3).

behalf of the child.[146] In August 2020, the Division received an application from Ms. T. on behalf of F., for the establishment of child support from Mr. C..[147] As such, Mr. C.'s support obligation in this case begins as of August 2020.

2. **Credibility Analysis**

Much of the outcome of this case hinges on witness credibility as to the primary issues in this case. Here, witness credibility is a major focus in determining whether Mr. C. is and was voluntarily and unreasonably unemployed or underemployed for any of the periods at issue. The Division has concluded that he was. Mr. C. concedes that perhaps it is appropriate to impute income to him at some level for 2021 and 2022. However, relying on both his testimony and the testimony of Mrs. B., he contends that any such imputation should be at a level far less than has occurred here. Once again, whether income should be imputed, and if so, at what levels, all hinges on witness credibility.

"It is the function of the trial court, not the reviewing court to judge the credibility of witnesses and weigh conflicting evidence."[148] The trial judge exercises discretion as to the credibility of witnesses, in drawing reasonable conclusions and inferences from witness testimony, weighing conflicting testimony and evidence, determining the weight to be given to witness testimony, and the persuasiveness of the witnesses. It is wholly within the judge's province to believe, disbelieve, or believe all, some or none of the testimony of any witness. If it is believed that a witness is willfully untruthful, the court may disregard any or all of that witness's testimony. The trier of fact is entitled to adopt whatever testimony it reasonably believes to be credible and if the testimony is in conflict, its probative force is for the trier of fact to determine.[149]

> In weighing the evidence and assessing the credibility of a witness, a trier of fact may consider any facts or circumstances in the case that tend to strengthen, weaken, or contradict a witness's testimony, such as; age, intelligence, and experience; strength or weakness of recollection; how a witness came to know the facts to which the witness testified; manner and appearance; whether a witness was frank or evasive; and whether the testimony was reasonable or unreasonable. Matters affecting the credibility of witnesses, and the weight and value to be given their testimony, and the pertinent rules, should be considered

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146 15 AAC 125.105.(a)(1)-(2).

147 Ex. 1.

148 Reilly v. Northrop, 314 P.3d 1206, 1214 (2013) (citing *McLaren v. McLaren,* 268 P.3d 323, 331 (Alaska 2012).

149 88 C.J.S. *Trial* § 1214 Credibility of Witnesses and Weight of Testimony (2022) (citations omitted).

and applied in determining the weight and sufficiency of the testimony to establish particular facts.[150]

Traditional factors in assessing a witness's credibility, and that were considered in this case, include: (1) the witness's relationship to the other parties in the case; (2) whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice; (3) the inherent probability or improbability of the witness's testimony; (4) whether the witness's testimony was consistent or inconsistent with other evidence in the case (i.e. the presence or absence of corroborating evidence); (5) the witness's opportunity and ability to see or hear or know the things about which the witness testified; and (6) the apparent quality of the witness's memory, knowledge, and understanding.

Another important factor in assessing the character witnesses and the credibility of their testimony is by looking at the witnesses' responses to questions on cross examination. As the Alaska Supreme Court has noted, "cross-examination has been described '. . . as beyond any doubt the greatest legal engine ever invented for the discovery of truth.' To that end, it is the vehicle by which the credibility of adverse witnesses is tested."[151]

Below, credibility is analyzed regarding each of the witnesses in this case. It also takes in account all the witnesses' testimony at hearing, not only referenced below and in the separate testimony sections of this decision and order, but also in the full audio recording of the witnesses' testimonies in this matter.

a. Testimony of Q. B.

In applying the above-referenced considerations to the testimony of Mrs. B., it is difficult to accept the entirety of her testimony at face-value. While she came across as sincere regarding much of her testimony, she was conveniently forgetful, evasive, non-responsive and even somewhat hostile when it came to other aspects of it. These general impressions seemed to directly correlate to whether the questioning involved subjects related to Mr. C. job duties, financial aspects of the company, his salary, Mrs. B.'s daughter, etc. On the other hand, when questioned about facts that did not matter much to the outcome of this case, or that might seem relatively unimportant to its outcome, Mrs. B. was very quick and forthright in her responses.

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[150] 23A C.J.S. *Criminal Procedure and Rights of the Accused* § 1549 Credibility of Witnesses Generally (2022) (citations omitted).

[151] *Evans v. State*, 550 P.2d 830, 836 (Alaska 1976) (quoting 5 J. *Wigmore, Evidence s* 1367, at 32 (Chadbourn rev. 1974)).

In considering the above-referenced factors concerning credibility, it noteworthy that Mrs. B. is the mother of Mr. C.'s ex-wife, K. B., and is Mr. C.'s former mother-in-law. She has known him for over 15 years, and he has been her employee for roughly the same period. During much of this same period, he was also a member of her family. It is also clear that Mr. C. is somewhat limited in his financial resources and earning capacity irrespective of whatever conclusions may be drawn below. As such, it is likewise clear to Mrs. B. that any monies Mr. C. is ordered to pay in this case for the care and support of F. will necessarily be that much less he is able to contribute toward the care and support of Mrs. B.'s daughter, or her four grandchildren that arose from her daughter's relationship with him. As such, based on the nature of Mrs. B.'s relationship to Mr. C. and his four children with Ms. B., there was every reason to closely scrutinize her testimony.

There were also many aspects of Mrs. B.'s testimony that were highly improbable and therefore, unbelievable. Among other things, she testified that, despite being a majority shareholder, president, and the company's exclusive bookkeeper, she had no idea of what Employer A's profit and loss statements might reveal and could not provide any details of its overall profitability other than to suggest, without support, that it is in a dire financial condition. She could not provide any details regarding whether Employer A was profitable or unprofitable in the past several years. She also indicated that any questions as to its profits and losses would have to be directed to the company's accountant.[152]

On direct examination, Mrs. B. also initially asserted that Mr. C. held no ownership interest in the company. Yet, on cross-examination, she acknowledged that, in fact, he held a 10% ownership interest and was designated as the company's secretary. She went on to suggest that ever since her daughter had divorced Mr. C., it had been the intent of her and her husband to remove him as an owner, and director of the company. She said that as soon as she finished with her testimony at hearing that day, she was going to immediately contact the company's attorney to do so. When asked how much Mr. C. might be paid for his ownership interest, Mrs. B. claimed not to know and said the company's attorney would have to figure that out. During cross examination, Mrs. B. also acknowledged that the company had just recently filed its 2023 biannual report with the State of Alaska and that as of that date, Mr. C. was still identified as the company's secretary and 10% owner.[153]

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[152] Q. B. Testimony.
[153] *Id.*

Mrs. B. also said that because the business was struggling so badly, it was her and her husband's intent to simply make through to this coming summer before potentially closing its doors. When asked why they would not attempt to sell the company as opposed to simply shutting it down, she asked who would buy it and said that she did not know how they would go about doing so. This is despite testimony that her husband has been running the business for over 40 years, it has been incorporated for over 20 years, it is one of only eight acoustic ceiling tile and wall contractors in the Anchorage area and that is has employed upwards of 20 employees in recent years. All such testimony seemed implausible and contradictory.[154]

On cross examination, Mrs. B. also initially refused to answer questions regarding her understanding of the status of Mr. C.'s relationship with her daughter now. She initially suggested that the questions should be posed to Mr. C. and her daughter. She eventually acknowledged that the couple seemed cordial for purposes of their children. When asked whether the couple still lived together, she said that they did not, "to the best of her knowledge."[155]

When asked if she knew where Mr. C. lived, she hesitantly provided a physical address, but said nothing more about her knowledge of this location. It was only after even further cross examination on this point later in the hearing that she admitted, in fact, that the address was a property that belonged to her son.[156]

When asked whether Mr. C. uses the company truck for personal reasons, Mrs. B. did not simply answer the question yes or no. Instead, she said, that he is not supposed to, but that it is there for him if he needs it. Despite being asked at least twice, she never did answer directly about whether Mr. C. uses the company truck for personal use.[157]

Finally, Mrs. B. testified that:

1) the company was barely making enough money to make ends meet;
2) she and her husband were likely going to close the company this coming summer due to the lack of work or available contracts;
3) Mr. C. holds a 10% ownership interest in the entity;
4) there was a seven-month period in 2021 in which there was allegedly no work available for Mr. C., but was work for her, her husband, daughter, and son; and

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154 *Id.*
155 *Id.*
156 *Id.*
157 *Id.*

5) the company could not afford to pay Mr. C. at the rate he was paid prior to the administrative hearing review decision issued in this case, but that then suddenly, he was able to return to work nearly full-time within days of the decision being issued.

After this testimony, Mrs. B. was cross examined further regarding the company's profitability in 2021. Specifically, she was asked whether the company made a profit or not? After several attempts of unsuccessfully getting her to answer this straightforward question, she quipped, "I am confused. Is this about E. C. or is this an interrogation of our company?"[158]

In addition to the above, Mrs. B. was generally very quick and well-spoken in answering questions on direct examination. However, on cross examination, her answers were frequently far more delayed, less detailed, non-responsive, or evasive.

Finally, Mrs. B. claimed a lack of knowledge of such basic facts such as roughly when Mr. C. and her daughter's divorce was finalized, when Mr. C.'s salary was reduced from $40 per hour to $22 per hour. In fact, as to his salary, at one point she initially claimed that she thought this change may have occurred in 2020. It was only after further cross examination and being allowed an opportunity to review her records that she in fact confirmed his reduction in pay occurred within days following the administrative review decision being issued in March 2022. She also acknowledged that this change in hourly rate occurred at the same time Mr. C. went from not working at all because of a claimed lack of jobs being available, to suddenly returning to work nearly full time.[159]

Based on all the above, while it is not suggested that all of Mrs. B.'s testimony was entirely false or untruthful, it is believed, that some of it should be viewed with a significant degree of skepticism, and either disregarded altogether or afforded little if any weight. This includes, but is not limited to, her testimony on the issues such as Mr. C.'s job duties and skills, the reasons for his rate of pay being reduced from $40 per hour to $22 per hour, how financially stressed the company is, the reasons for Mr. C. not working or having reduced hours throughout 2021, 2022 and through to the present, her claimed lack of knowledge as to the businesses' profits and losses, Mr. C.'s motivations for returning to work, the alleged inability to pay him at a rate greater than $22 per hour, and any suggestion that Mr. C.'s interest in business or that the

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158 *Id.*

159 Q. B. Testimony.

business itself may have little, if any, value, and any suggestion that the business might close its doors due to a lack of business.

b. Testimony of E. C.

There are also concerns regarding the credibility of Mr. C.. While Mr. C. came across as well-prepared for much of his testimony and avoided emotional outbursts or being overly abrasive, his testimony was inconsistent with written statements he provided to the Division and was also frequently evasive and highly improbable.

For instance, he initially denied sharing any financial information with his ex-wife, Ms. B.. However, after further cross-examination, he subsequently acknowledged that he had shared some financial information with her and in fact, had recited to her the income and support calculations contained in the administrative review decision from March 24, 2022. He just denied ever providing her a copy of the decision itself.[160] It was this very decision and the information contained within that was very quickly and subsequently used by Ms. B. as the basis for justifying the Superior Court's modification of the child support award in her case, effectively reducing the amount of support available to F. in this case. Further, as Ms. Sledgister testified, it was clear that, in fact, Ms. B. had been given a copy of the administrative review decision, because a copy of the actual decision was presented by her as evidence in that case.[161]

At another point, Mr. C. testified that he stayed at home with his and Ms. B.'s four children from roughly September 2021 through March 2022. He also said that he did not work during this period because there was a lack of work. When asked what Ms. B. was doing during this period, he testified that she was working. However, when he was next asked where she was working, he claimed he did not know.[162]

Based on Mrs. B.'s testimony in this case, it was clear that Ms. B. was continuing to work for Employer A during this time. So, despite sharing financial information with his wife and soon-to-be ex-wife, and despite caring for the couples' four children throughout the entirety of this roughly six-month period, Mr. C. claims he had no idea of where Ms. B. was working. This testimony was simply not credible. While this may not have been a significant or even a material issue, it was emblematic of Mr. C.'s entire testimony.

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160 E. C. Testimony.
161 Ex. J; E. C. Testimony; Kimberly Sledgister Testimony.
162 *Id.*

Mr. C. was also asked to confirm that in his communications with the Division prior to the administrative review decision, he had made it clear that he thought the Division had miscalculated his income. He acknowledged that he had.[163] Based on these acknowledgements, he was asked why, if that were the case, he would pass to his ex-wife the income information from the administrative review decision that he believed to be so inaccurate so that she could then use it as a basis for modification of the child support order in the Superior Court case? He never squarely answered the question. He was also asked whether he opposed the motion to modify the child support award in that case since it was based on income information he had so vigorously opposed and argued was wrong. He simply responded with, "why would I?" He also claimed that he "was advised not to" regarding filing an opposition to the motion to modify support.[164]

Although Mr. C. indicated that he was not working from September 2021 through early April 2022, he said it was because there was a lack of available work. He denied that his motivation was to minimize child support for F. or his mistaken reliance on 15 AAC 125.060(b). Nevertheless, he confirmed that when he stopped working on approximately September 4, 2021, it was within days of the paternity results occurring confirming his paternity of F..[165] Then, after not working for over six months, within a couple of weeks after the Division's administrative review decision on March 24, 2022, imputing significant income to him, he suddenly returned to work. He testified that, at that point, there was sufficient work for him at Employer A for him to work nearly full time. He indicated that the only change following his return to work on April 17, 2022, was that his rate of pay was unilaterally reduced by the B.s from $40 per hour to only $22 per hour. As such, within weeks of the administrative review decision being issued, imputing significant levels of income to him, work became available again, and he returned to work at a greatly reduced rate of $22 per hour, significantly lower than he had been paid in years.[166]

At another point in his testimony, Mr. C. was questioned about whether, based on his work experience, he was qualified to be a "project manager." He said he was not. He indicated that doing so generally requires four years of college education, a bachelor's degree in

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163 *Id.*

164 *Id.*

165 *Compare* Ex. 3 at p. 2 (the proposed order establishing paternity was filed on September 1, 2021. The paternity findings and conclusions were issued on September 16, 2021), *with* Ex. E, p. 12. It is presumed that the paternity testing results likely were issued and shared with the parties in the latter part of August 2021.

166 *Id.;* Ex. K.

construction management or engineering, a college diploma, and years of experience.[167] Nevertheless, on June 15, 2018, Mr. C. submitted a consumer loan application A. In it, he identified that he possessed 14 years of experience with his employer, Employer A. He also specified that he was a "Project Manager" for the entity.[168] In the application, Mr. C. verified that "all statements are true and complete. . . ."[169] While Mr. C.'s counsel later characterized this project manager reference as an "embellishment," it is one of several examples of inconsistencies between the evidence and Mr. C.'s testimony.

Following this testimony, Mr. C. was asked whether, by his actions, his goal was to pay Ms. T. as little child support as possible. Tellingly, he responded, "I cannot answer that truthfully yes or no."[170] When asked why, Mr. C. responded with, "I intend to pay Ms. T. what is fair and something I can survive with."[171]

Another reason for questioning the credibility of Mr. C. is that his hearing testimony, including his stated facts and intentions, are belied by the rather clear statements he made in documentation filed with the Division before his appeal. Among other things, he stated as follows:

> A duty of support is not owed to O. T. for child F. T. because this child has a legal father, N. T.. O. T. has been married to her husband, N. U. T. for 9 years. F. T. was conceived and born to O. and N. T. 3/31/20.
>
> . . .
>
> O. T. has now chosen to fraudulently apply for services for the child just to get this case reopened despite no such services being needed.
>
> . . .
>
> O. is resorting to manipulating the child support system to pursue and harass me to serve her personal vendetta against me.
>
> . . .
>
> I ask that CSSD not join her in this effort and instead close this case, providing peace to both of our families and not allow O. to exploit your agency's important work.[172]
>
> . . .

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167 E. C. Testimony.
168 Ex. 16, p. 1.
169 *Id.*
170 *Id.*
171 *Id.*
172 Ex. 9, p. 12.

> The only reason I can see that I am not being afforded the privilege of care is due to my male biology which is discrimination.[173]
>
> . . .
>
> If you requested something from my previous employer and they did not get it to you, why am I being penalized for that? I have no control over others' actions.[174]

In this instance, and based on all the above, it does appear that Mr. C. has been motivated to pay Ms. T. as little as possible, including his mistaken reliance on 15 AAC 125.060(b); increasing his obligations to Ms. B. and their children; and suggesting that he be given deductions above and beyond those which are allowed under the law. As noted above, Mr. C.'s position in this case appears largely unsupported except through his testimony and now, the testimony of his former mother-in-law. However, his testimony appears tainted by his vehement and unfounded denials, accusations, and bitterness.

Accordingly, the credibility of Mr. C.'s testimony is seriously questioned. Here, he is the obligor identified in this case and has a strong interest in its outcome. The likelihood that many of the events happened in the manner he testified is unlikely and improbable. As such, just as occurred with Mrs. B., as to some of the more pertinent and relevant points in this case, his testimony should be viewed with a significant degree of skepticism, and either disregarded altogether or afforded little if any weight. This includes, but is not limited to, his testimony regarding his job duties and skills, his experience as a project manager, the reasons for his rate of pay being reduced from $40 per hour to $22 per hour, how financially stressed the company is, the reasons for his not working or having reduced hours throughout 2021, 2022 and through to the present, his knowledge about the health of the business and its workload, the reasons for his not working beginning in September 2021 and his reasons for returning to work in April 2022, the reasons for his reduced rate of pay after returning to work, his efforts to look for other employment while he was not working for Employer A, any suggestion that his interest in business or that the business itself may have little, if any, value, and any suggestion that the business might close its doors due to a lack of business.

c. Testimony of Kimberly Sledgister

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173 *Id.* at 18.
174 *Id.* at 19.

Ms. Sledgister is a Child Support Specialist II with the Division and the Department of Revenue, State of Alaska. She is not related to any of the parties and possesses no identified, known, or perceived bias or prejudices. At all times during the hearing testimony in this matter she presented herself as sincere, credible, and objective. She specifically addressed where errors were made in some of the Division's prior calculations by applying a deduction for too many prior born children and for allowing a deduction for medical expenses for those children when that should not have occurred. She also pointed out that for future support calculations to be accurate, they need to account for the current, anticipated PFD from 2023 forward, totaling $2,622.[175]

Accordingly, there are no concerns in this case regarding the credibility of Ms. Sledgister or her testimony.

3. <u>Voluntarily Unemployed or Underemployed</u>

Much of this dispute centers on whether Mr. C. was voluntarily unemployed or underemployed. It appears that from September 10, 2021, until April 17, 2022, he did not work.[176] He and his counsel apparently concede that it is proper to impute income to him during this period. They also seemingly concede that it is proper to impute income to him from January 1, 2021, until September 10, 2021. They do not concede, however, that imputation is proper after April 17, 2022, nor do they agree with the Division regarding the rates at which such imputation should occur.[177]

In cases in which voluntary unemployment is raised, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed [or underemployed]."[178] The first step is to determine if the parent is voluntarily unemployed or underemployed. In this case, this point appears largely conceded. Nevertheless, even if it is not, Mr. C.'s income in 2021 underwent a significant decline. Further, even after returning to work in 2022, his rate of pay was significantly reduced and his hours continued to be low. Although he and Mrs. B. attempted to justify this decline and subsequent unemployment and underemployment, that testimony was not credible. As such, it is concluded that Mr. C. was and is voluntarily unemployed and underemployed from 2021 to date.

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175 Kimberly Sledgister Testimony.
176 E. C. Testimony; Ex. E, p. 12; Ex. K, p. 1.
177 E. C. Testimony; E. C. Pre-hearing Brief (December 22, 2022).
178 *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

The second step in the analysis is to determine whether the parent's change of employment was unreasonable. An integral part of the analysis is whether the parent's lack of employment or underemployment is a result of "economic factors," as in being laid off, or of "purely personal choices."[179] It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a parent.[180]

The Alaska Supreme Court explained the essence of the analysis in *Beaudoin v. Beaudoin*[181] by stating that "the relevant inquiry under Civil Rule 90.3 is. . . whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning."[182] At the same time, however, the court thought it important to point out that:

> . . . Rule 90.3(a)(4) does not rigorously command pursuit of maximum earnings. The rules more modest objective is to give courts broad discretion to impute income based on realistic estimates of earning potential in cases of voluntary and *unreasonable* unemployment or underemployment.[183]

The commentary to the Rule further directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income to a party based on voluntary unemployment [or underemployment]."[184]

Next, the 2022 Alaska Supreme Court case of *Rohde v. Rohde,*[185] adds further clarity regarding an obligor's potential unemployment or underemployment. Specifically, that case provides as follows:

> We recently described two scenarios for the imputation of income. The first 'scenario is when [one spouse] points to [the other spouse's] previous employment and related income as a prima facie case for underemployment,' and the court relies on that earnings history to impute income. The second scenario requires the court to evaluate a spouse's earning potential in the absence of a relevant earnings history. In this second scenario we require 'specific findings on the particular skills or qualifications' and "the availability of jobs matching those qualifications."[186]

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179 *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).
180 *Kowalski,* 806 P.2d 1368, 1371 (Alaska 1991).
181 24 P.3d. 523 (Alaska 2001).
182 *Beaudoin,* 24 P.3d at 528.
183 *Id.* (emphasis in original).
184 Civil Rule 90.3, Commentary III.C.
185 507 P.3d 986, (Alaska 2022).
186 *Id.* at 995 (citations omitted).

Just as above, the testimony provided by Mr. C. and Mrs. B. justifying his unemployment and underemployment was not credible. His actions in this case appear solely intended to justify minimizing his support for F.. They appear wholly unreasonable in light of Mr. C.'s work history, experience, historical pay rate and hours. As such, his unemployment and underemployment are concluded as unreasonable and therefore imputation is appropriate.

Based on the above-referenced authority and the parties' respective positions, there are four periods applicable to this case and for which imputation might conceivably apply. Those periods and the parties' respective positions are summarized as follows:

Period	**Imputation at Issue?/ Respective Positions**	**Applicable Hourly Wage**	**Annual Wages Applied**	**Basis for Annual Wages**
Aug. 2020 – Dec. 2020	No	-	$69,250	Pay stub data
Jan. 2021 – Dec. 2021	Yes	-	-	-
	C.	$40 per hour, until Sept. 10, 2021, and $22 per hour after Sept. 10, 2021, 50 weeks total	$61,280	Imputation based on hourly wage computations
	Division	-	$86,154	Imputation based on average of 2018 Dept. of Labor Reported wages and 2020 pay stub data
	Decision	$40 per hour, 40 hours per week, 50 weeks total	$80,000	Imputation based on regular hourly wage rate paid in 2022 through paternity order
Jan. 2022 – Dec. 2022	Yes	-	-	-
	C.	$22 per hour, 40 hours per week, 50 weeks total	$27,280	Based on actual hourly wages paid for the year at $22 per hour, and actual hours for the year
	Division	-	$86,154	Imputation based on average of

				2018 Dept. of Labor Reported wages and 2020 pay stub data
	Decision	$40 per hour, 40 hours per week, 50 weeks total	$80,000	Imputation based on regular hourly wage rate paid in 2022 through paternity order
Jan. 2023 – Forward	Yes	-	-	-
	C.	$22 per hour, 40 hours per week, 50 weeks total	$44,000	Based on actual pay rate for the year, at 40 hours per week, and 50 weeks
	Division	-	$86,154	Imputation based on average of 2018 Dept. of Labor Reported wages and 2020 pay stub data
	Decision	$40 per hour, 40 hours per week, 50 weeks total	$80,000	Imputation based on regular hourly wage rate paid in 2022 through paternity order

As indicated, there does not appear to be any dispute regarding the period from August 2020 until December 2020. For this period, imputation is unnecessary. Instead, the Division has used Mr. C.'s actual pay for the year during the period, based on his pay stubs, and has calculated his support obligation on that basis.[187] As to the annual income used, Mr. C. does not challenge this analysis and as such, it will not be revisited here.[188]

It is beginning in 2021 that imputation becomes an issue. Per Ms. Sledgister's affidavit on December 28, 2022, and her testimony, it is the Division's position that, Mr. C. was voluntarily unemployed during 2021 and 2022. It then indicates that he was voluntarily underemployed for 2022 and ongoing. Finally, it contends that Mr. C. has demonstrated the ability to earn a base rate of $40 an hour as a ceiling tile installer/project manager.[189]

[187] Ex. 8 at pp. 2, 11-14, 21; Kimberly Sledgister Testimony.
[188] E. C. Testimony; E. C. Pre-hearing Brief at 3.
[189] Submission to the Record (December 28, 2022), p. 1.

However, because at the time of the administrative hearing decision, the Division lacked hardly any employment data or information from Mr. C. and his employer, it opted to impute income to him based on the two most recent and complete years of data it possessed, 2020 and 2018. It then averaged the annual income for those two years arriving at the figure of $86,154. It was this annual income derived from averaging Mr. C.'s 2018 and 2020 incomes that was then used by the Division to impute for 2021, 2022, and 2023 forward for its support calculations in this case.[190]

Based on the evidence presented at hearing, however, it is believed that different imputation figures are appropriate. In this instance, because Mr. C. has been employed by Employer A on a virtually continuous basis since 2006, it is the former scenario under *Rohde* that controls, not the latter. Also, while both Mr. C. and Mrs. B. contend that Mr. C. was unemployed from September 2021 until April 2022 based on a lack of available work, such testimony was not credible and unconvincing.

There is little doubt that the COVID global pandemic has had an impact on many businesses in Alaska and nationwide. It may also be true that Employer A's business has been affected by the pandemic. Yet, in presenting his evidence, Mr. C. has failed to fully consider that as the person who filed this appeal the burden of proof is upon him, not the Division and not Ms. T..[191] As a part owner of Employer A and as one who is closely aligned with its other owners, he had more than ample opportunity to demonstrate that the business has been impacted by the pandemic. However, he failed to do so and failed to meet his burden of proof on his point. Yet the entire basis for his reduced annual income hinges on the business supposedly being in dire financial condition as opposed to him simply choosing not to work in an effort to minimize his support obligation for F.. He supplied no tax returns for the business, no profit and loss statements, and no testimony from the company's accountant. He provided nothing other than unsupported testimony from himself and Mrs. B., both of whom have a vested interest in minimizing his support obligation in this case. There were also serious credibility issues raised throughout both his and Mrs. B.'s testimony. Detailed documentary evidence could have conceivably been provided on these points, but it was not.

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190 Ex. 8 at pp. 2, 15-18, 21; Kimberly Sledgister Testimony.
191 15 AAC 05.030(h).

While Mr. C. claims he looked for work, he acknowledged that he made no efforts to contact any of the other seven or eight ceiling tile contractors in the Anchorage area. While he supplied Department of Labor job listing information for ceiling tile positions, purporting to show that only one such position has been advertised in recent years and while even that position was in Fairbanks, by his own admission, employers for these sorts of positions do not routinely advertise for them.[192]

Finally, the timing of Mr. C.'s unemployment in this case and his subsequent underemployment are simply far too suspect, particularly when coupled with his vehement and unfounded denials, accusations, and bitterness toward Ms. T.. This includes the fact that apparently, within days of learning that his paternity of F. was conclusively established, he suddenly went from being employed full-time, to Employer A having no work available for him at all for over the next six months. And then, when the administrative hearing decision conclusively established on March 24, 2022, that he could not avoid imputation of income by staying at home with his and Ms. B.'s children, full time work once again suddenly available. But now, unlike before, apparently Employer A was so financially stressed that it could only pay him slightly over half of the hourly rate he was previously making. On top of this, his ex-wife conveniently used the information contained in the administrative hearing decision to modify support in her case, substantially increasing that support and thereby effectively reducing what might be awarded in this case.

Any of the above facts, standing alone, would raise serious doubts about whether Mr. C.'s actions equate to voluntary and unreasonable unemployment and underemployment. However, when viewed in their totality, as they must and as the Alaska Supreme Court has directed, it is far from a close call. Mr. C. was voluntarily and unreasonably unemployed and underemployed. He has failed to carry his burden of proof in establishing a lower earning capacity or demonstrating that, under the facts here, it is inappropriate to impute income to him.

Mr. C. has also failed to prove that Employer A has been impacted by the pandemic to the extent claimed. While there is little doubt that it has, there is simply no credible evidence that allows a determination regarding how much it has been impacted. Again, while Mr. C. and Employer A were given every opportunity to furnish this information, they failed to do so. Instead, it appears that Mr. C. and Mrs. B. have sought to collude in their actions and in their

[192] E. C. Testimony.

testimony to paint a picture that is self-serving and inaccurate. Doing so is not only inappropriate, but it is also extremely unfair to Mr. C.'s daughter, F..

Consequently, it is concluded that the $40 per hour wage Mr. C. was employed at prior to these proceedings occurring and the administrative review decision being issued is a reasonable and appropriate wage to impute to Mr. C.. Further, it is this wage, together will full time employment at 40 hours per week and 50 weeks per year that will be applied for his period of unemployment and underemployment from 2021 to the present.

It is noted that $40 per hour is more than the average wage of $26.78 per hour attributable to "ceiling tile installers" in the state of Alaska per U.S. Department of Labor statistics.[193] However, this rate of pay is less than the average hourly wage in Alaska of $72.23 paid to "construction managers" and the average hourly wage of $45.63 paid in Alaska to "project management specialists."[194] Based on the evidence in this case, it is believed that, because of his years of experience in ceiling tile installation with Employer A, Mr. C.'s position was likely much more akin to a project or construction manager than simply a ceiling tile installer. This is supported by the rate of pay he was being paid at Employer A before the events giving rise to this case, his over 16 years of experience with Employer A, the fact that he was being paid an even far greater rate of pay on Davis-Bacon jobs, and that he himself characterized his position on a consumer loan application as being a "project manager."[195]

Irrespective of the foregoing, as *Rohdes* directs, it is Mr. C.'s most recent employment and related income that forms a *prima facie* case for unemployment and underemployment, and that reliance should be placed on earnings history to impute income.[196] When that is done here, $40 per hour at 40 hours per week, 50 weeks per year, are the most appropriate, reasonable, and supportable imputation figures to use. It is this rate of pay that will be imputed to Mr. C. and applied during the entirety of 2021, 2022, and 2023 and moving forward.

4. <u>Allowable Deductions</u>

In this instance, Mr. C. has argued that his child support obligation for F. should be reduced based on several claimed deductions. These include a court ordered "health insurance

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193 Ex. 15, p. 11.
194 Ex. 15, p. 2.
195 Ex. 16, p. 1. Mr. C. also affirmed that all statements made in the application were true and correct, including his description of his position as "project manager."
196 *Rohde,* 507 P.3d at 995.

adjustment," life insurance contributions and retirement contributions. As explained below, Mr. C. has failed to carry his burden of proof in this case that any of those items should be considered as allowable deductions from his income in calculating his support obligation to F..

Under Rule 90.3, allowable deductions include voluntary contributions to a retirement account in which the earnings are tax free or tax-deferred, except that the total amount of these voluntary, plus mandatory contributions, may not exceed 7.5% of the parent's gross wages.[197] Also allowed as a deduction is child or spousal support from different relationships for prior children that is required by other court or administrative proceedings.[198]

a. Health insurance adjustments for prior children with Ms. B.

Mr. C. seeks a deduction from his annual income based on medical costs he claims to be paying on account of his children with Ms. B.. Per both the of the Superior Court orders involving Ms. B. and Mr. C.'s children, Ms. B. was ordered to pay for health insurance coverage for the children. Half of the cost of her doing so was added, as a health insurance adjustment, to the total monthly amount owing by Mr. C..[199] From January 2022 until May 2022, that monthly amount was $225.[200] From April 2022 to date, that monthly amount is $276.[201]

However, in this instance, there is no evidence that Mr. C. has actually paid the amounts ordered by the Superior Court. Further, it is questionable whether these "health insurance adjustments" are properly construed as child or spousal support under Rule 90.3(a)(1)(C)(i). Accordingly, based on the evidence and application of Rule 90.3(a)(1)(C)(i), and 90.3(d)(1), it does not appear that these amounts are presently appropriate deductions in this case.

b. Roth A contributory IRA

Mr. C. also seeks a deduction from his annual income for payments allegedly made to a Roth contributory IRA account held with Roth A.[202] These contributions, total roughly $200 per month, and were allegedly made from approximately May through October 2022.[203]

While these contributions may in fact qualify as appropriate deductions, as Ms. Sledgister testified, there is no evidence that they occurred for the entirety of the year. If they are to be

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197 Rule 90.3(a)(1)(b).
198 Rule 90.3(a)(1)(c)(i).
199 Exs. I and J.
200 Ex. I.
201 Ex. J.
202 Ex. S.
203 Kimberly Sledgister Testimony.

properly considered, the Division needs proof that they occurred throughout the entire year and even potentially into January.[204] As of right now, that information has not been provided and these payments are not properly construed as deductions.

c. Life insurance contributions

Finally, Mr. C. seeks a deduction from his annual income for life insurance he has allegedly procured, beginning in January 2020 through January 2022, naming himself as insured.[205] He asserts that these qualify as eligible deductions as retirement payments under Rule 90.3(a)(1)(B).[206]

While these two policies may well have a net cash values in addition to death benefits, there is nothing to suggest, and no support has been provided to indicate, that they qualify as a contribution to a retirement or pension plan or account in which the earnings are tax-free or tax-deferred.[207] Consequently, contributions to these life insurance policies will not be construed as voluntary contributions to a retirement or pension plan or eligible for deductions from Mr. C.'s annual income.

5. Mr. C.'s Ownership Interest in Employer A

As noted, per Rule 90.3(a)(1), Mr. C.'s income for purposes of calculating his support obligations for F. are to be calculated based on his "total income from all sources." Income includes, but is not limited to, income derived from businesses and partnerships.[208] Further, as to the issue of potential income, commentary to Rule 90.3 provides that child support may be calculated based on a determination of the potential income of a parent who is voluntarily and unreasonably unemployed or underemployed. In doing so, the totality of the circumstances shall be considered.[209]

Here, it is undeniable that Mr. C. holds a 10 percent ownership interest in Employer A. Mr. C. and Mrs. B. implied in their testimony that his interest in the entity had little if any value. This implication was based on their repeated suggestions that he had not paid for anything or invested anything in the business as consideration for his ownership interest. However, as someone who worked for the business for over 16 years and was married to the daughter of the

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204 *Id.*
205 Exs. Q and R.
206 E. C. Testimony.
207 Civil Rule 90.3(a)(1)(B); *See also,* Kimberly Sledgister Testimony.
208 Civil Rule 90.3, Commentary III.A.
209 *Id.* at III.C.

businesses' owners, there is more than adequate justification for finding legal consideration for Mr. C.'s interest.

Further, as already indicated, the testimony of Mr. C. and Mrs. B. as to the dire financial condition Employer A is in was deemed not credible. While it may or may not be in dire financial condition, their testimony on this point simply could not be relied upon. As such, it is highly suspected that Mr. C.'s ownership interest in Employer A may, in fact, have value. That said, however, there was no evidence offered at time of hearing as to what that value might be. Accordingly, there is no opportunity to take it into account here.

B. Correct Support Obligation Calculations

Based on the above, itemized below are Mr. C.'s support obligations for F..

1. August through December 2020

As a result of the above-referenced information and imputation of income, the annual income used to calculate Mr. C.'s support obligation for F. in 2020, is $69,250.[210] This is derived from his pay stub information for that year. Based on that amount, and after allowing a deduction for his three prior born children of $1,546, his monthly support obligation for F. is $628.

2. 2021

As a result of the above-referenced information and imputation of income, the annual income used to calculate Mr. C.'s support obligation for F. in 2021, is $80,000. This figure is derived from the imputation of income analysis above. Based on this amount, and after allowing a deduction for his three prior born children of $1,758, his monthly support obligation for F. is $714.

3. January through April 2022

As a result of the above-referenced information and imputation of income, the annual income used to calculate Mr. C.'s support obligation for F. from January through April 2022, is $80,000. Based on that amount, and after allowing a deduction for his three prior born children of $1882.40 per the superior court's modified order,[211] his monthly support obligation for F. during this period is $960.

4. May through December 2022

[210] Ex. B, p. 29.
[211] Ex. J.

As a result of the above-referenced information and imputation of income, the annual income used to calculate Mr. C.'s support obligation for F. from May through December 2022, is $80,000. Based on that amount, and after allowing a deduction for his three prior born children of $1882.40 per the superior court's modified order,[212] his monthly support obligation for F. during this period is $719.

5. <u>January 2023 and Forward</u>

As a result of the above-referenced information and imputation of income, the annual income used to calculate Mr. C.'s support obligation for F. from January 2023, forward is $80,000. Based on that amount, and after allowing a deduction for his three prior born children of $1882.40 per the superior court's modified order,[213] his monthly support obligation for F. during this period and continuing forward is $720.

V. Conclusion

The evidence in this case demonstrates that Mr. C. has failed to carry his burden of proof in establishing that he is entitled to any deductions, other than on account of his three prior children with Ms. B., from the annual income used to calculate his support obligations to F.. Other than as to those potential deductions, there is no dispute between the parties regarding the monthly obligation owing from August through December 2020. That amount is $628.

It has also been determined that Mr. C. has been voluntarily and unreasonably unemployed and/or underemployed from 2021 to the present. Based on the evidence in this case, income is imputed to him in 2021, 2022, 2023 and moving forward, in the amount of $80,000 annually, based on an hourly rate of $40 per hour, a 40-hour week, and a 50-week work year. For 2021, and after again applying mandatory deductions for Mr. C.'s three prior born children, his monthly support obligations for F. total $714 per month.

When 2022 is analyzed, it is necessary to calculate the deduction for Mr. C.'s three prior children according to the child support orders entered by the superior court in his case with Ms. B.. One such order was issued in January and the other was issued in May.[214] From January through April and based on the initial support order in that case, Mr. C.'s monthly child support

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212 Ex. J.
213 *Id.*
214 Exs. I and J.

obligation for F. is $960. From May through December 2022 and based on the modified child support order in that case, Mr. C.'s monthly support obligation for F. is $719.

Finally, from January 2023 moving forward, and due to the slight increase in the anticipated PFD amount, Mr. C.'s ongoing support obligation for F. is $720 per month.

VI. Child Support Order

1. Mr. C.'s child support obligation for F. is set in the amount of $628 per month effective August 2020 through December 2020; $714 per month effective January 2021 through December 2021; $960 per month effective January 2022 through April 2022; $719 per month effective May 2022 through December 2022; and $720 per month effective January 2023 and ongoing based on primary custody.
2. All other provisions set forth in the March 24, 2022, Amended Administrative Support Order shall remain in full force and effect.

DATED the 16th day of February 2023 (reissued February 17, 2023)

SIGNED
Z. Kent Sullivan
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 13th day of March, 2023.

By: <u>SIGNED</u>
Signature
<u>Adam Crum</u>
Name
<u>Commissioner, Department of Revenue</u>
Title

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