

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

In the Matter of	)	
	)	
K.D	)	OAH No. 22-0443-CSS
_____	)	

DECISION AND ORDER

I. Introduction

L.H, the custodial parent, appeals an April 25, 2022 Administrative Review Hearing Decision affirming an October 26, 2021 Administrative Support Order with Preexisting Arrears setting the monthly child support award for K.D, the non-custodial parent, at \$0 for their child, N. The hearing was set for May 31, 2022. Ms. H appeared telephonically¹ on her own behalf. Division Representative Kimberly Sledgister appeared on behalf of the Child Support Services Division (the Division or CSSD). Mr. D did not appear.

Based on testimony at the hearing and review of the record, the Division decision is modified: Mr. D's monthly support obligation for N is set at \$400.00, effective December 1, 2021, and ongoing.

II. Facts²

L.H is the mother of 3-year-old N who lives with her. Ms. H and N's father, K.D, were not married and ceased living together soon after N's birth. Ms. H filed an application for establishment of support with CSSD on August 26, 2021.³

On September 10, 2021, CSSD issued an Administrative Order to Provide Financial and Medical Insurance Information to the parties.⁴ Neither party submitted any income documentation. CSSD obtained wage information reported by Ms. H's employers in the Alaska Department of Labor and Workforce Development database from the first and second quarters of

¹ Repeated calls to Mr. D's telephone were made over a 30-minute period. He was directed to call the Office of Administrative Hearings back and the telephone number to do so was provided. Mr. D did not contact OAH during the remaining hour over which the hearing was conducted.

² The facts set forth are established by a preponderance of the evidence based on the parties' testimony and exhibits in the record.

³ Ex. 1.

⁴ Ex. 2.

2021. This amount was multiplied by four for a total estimated annual income of \$30,520.00.⁵ The Alaska Permanent Fund Dividend (PFD) was included in the calculation.⁶

CSSD experienced difficulties calculating Mr. D's income. Mr. D is self-employed. He appears to own a Company A franchise covering a geographic area within Anchorage, Alaska. CSSD was not able to obtain a reliable income estimate for that self-employment. Therefore, CSSD imputed income to Mr. D assuming full-time work at minimum wage.⁷ That lead to an annual imputed income of \$21,507.00, including the PFD.⁸

CSSD applied the 50-50 shared custody formula in Rule 90.3(a) to those calculations, and on October 26, 2021, issued an Administrative Support Order with Preexisting Arrears setting Mr. D's monthly child support obligation as \$0 per month.⁹

Ms. H requested an administrative review of that determination on November 30, 2021.¹⁰

Ms. H filed for custody and support determinations in superior court on March 14, 2022.¹¹ As of the hearing date, attorneys had entered appearances for both parties, Ms. H's complaint had been served and an answer and countercomplaint filed by Mr. D. The superior court had not entered an interim support or custody order.¹²

CSSD issued an Administrative Review Decision affirming the October 26, 2021 Administrative Support Order with Preexisting Arrears on April 25, 2022.¹³

Ms. H appealed the Administrative Review Decision on May 4, 2022.¹⁴

A telephonic hearing was held on May 31, 2022. Ms. H appeared by telephone and represented herself. Kimberly Sledgister, Child Support Specialist, appeared on behalf of CSSD. Mr. D failed to appear.¹⁵

At the hearing, Ms. H identified two grounds of error by CSSD. Ms. H first argued that the 50-50 custodial basis used by CSSD was incorrect. According to her credible testimony, immediately after her separation from Mr. D, Ms. H moved to the Region A to live with

⁵ K. Sledgister testimony.

⁶ Ex. 3.

⁷ K. Sledgister testimony.

⁸ Ex. 3.

⁹ *Id.*

¹⁰ Ex. 4.

¹¹ *See, L.H v. K.D*, 3AN-22-0577CI.

¹² *Id.*

¹³ Ex. 5

¹⁴ Ex. 6.

¹⁵ Because Mr. D was not the requesting party, the decision is issued without taking evidence from him or waiting a 10-day grace period. 15 AAC 05.030(j).

her sister. Ms. H had full custody at that time. She was offered a job and returned to Anchorage in late 2021. After the move, she retained primary physical custody while Mr. D had weekend visitation and an evening—sometimes two—a week.¹⁶

Ms. H next argued that the imputed income for Mr. D was unrealistically low. She and Mr. D lived together for ten years before their separation. During a portion of their cohabitation, Ms. H did not work, and Mr. D supported her and their child without financial stress. He made more than minimum wage from the Company A business throughout their relationship. She was not aware of his actual income because he hired accountants to do his taxes. She testified, however, that his assets and obligations were inconsistent with the imputed minimum wage income. She stated that the mortgage on his home is approximately \$1,000.00 a month plus utilities; the rental fee for his shop is \$1,600.00 a month plus utilities; the payment for his personal vehicle is \$930.00 a month; and he pays a monthly fee for the Company A truck.¹⁷

She and Mr. D discussed child support and he agreed to pay \$400.00 a month, according to her testimony. Her application for establishment of support lists that sum as paid to her in 2021. Ms. H testified that she had text messages from Mr. D telling her that he made more than minimum wage and wanted to pay accurate child support. She was surprised he did not send financial information to CSSD because he told her that he would do so.¹⁸

Ms. H filed for custody and support determinations in superior court on March 14, 2022.¹⁹ The purpose of her filing was to formalize the 70-30 custodial split and compel reliable information regarding Mr. D's actual finances on which to base a court-ordered support amount. Ms. H testified that she felt she had to compel examination of Mr. D's finances because he failed to voluntarily comply with CSSD.²⁰

Ms. Sledgister testified that establishing support awards for self-employed parents can be difficult. The Department of Labor does keep statistics of the average wages for certain types of self-employment, but Mr. D's form of employment is not on that list. The only labor records of which she was aware indicated an income range of \$19,000.00 to \$110,000.00 for Company A franchisees nationwide. Because CSSD had no concrete information on which to narrow that

¹⁶ K. H. testimony.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See, L.H v. K.D*, 3AN-22-0577CI. (Available on-line <https://records.courts.alaska.gov/eaccess/home.page.2>)

²⁰ K. H. testimony.

range, it based Mr. D's support calculation on the federal minimum wage as directed by 15 AAC 125.050(b)(3).²¹

III. Discussion

A parent is obligated both by statute and common law to support his or her children.²² A parent's child support obligation is determined primarily through a formula set out in 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."²³ If the parents have shared or divided custody, CSSD will calculate the child support award by applying the formulas set out in Alaska Rule of Civil Procedure 90.3 to the adjusted income of each parent.²⁴ Rule 90.3(a)(1) provides that an obligor's child support obligation is to be calculated "as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage" set by the number of dependent children. Adjusted income is based on the obligor's "total income from all sources," minus mandatory deductions (such as taxes and social security).²⁵ Determining an obligor's annual income for purposes of calculating ongoing child support is "necessarily speculative because the relevant income figure is expected future income."²⁶ Unless a parent is voluntarily and unreasonably unemployed or underemployed, his or her child support obligation should be based on the best available information about his or her expected income, not potential income.²⁷ Factors to consider are set out in 15 AAC 125.050(c).²⁸

²¹ K. Sledgister testimony; 15 AAC 125.050(b)(3) provides that if there is "no information concerning the parent's total income in a past year, the agency will base the support calculation on the (A) Male and Female Average Annual Wage Income by Age Group statistics provided by the Department of Labor and Workforce Development if the parent is 19 years of age or older and resides in this state; (B) federal minimum wage as set out in 29 U.S.C. 206(a)(1) or minimum wage where the party resides, whichever is greater, if the parent is 19 years of age or older and resides outside of this state; or (C) minimum \$50-per-month support amount set out in Alaska Rule of Civil Procedure 90.3(c)(3) if the parent is less than 19 years of age."

²² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030

²³ Civil Rule 90.3, Commentary I.B.

²⁴ 15 AAC 125.070.

²⁵ Civil Rule 90.3(a)(1).

²⁶ Civil Rule 90.3, Commentary III.E.

²⁷ *Benedixen v. Benedixen*, 962 P.2d 170, 172 (Alaska 1998).

²⁸ The factors include (1) the parent's current income as of the date of the agency's calculation of support, as reflected in recent pay stubs or other information from the parent or the parent's employer; (2) the parent's actual income during the immediately preceding calendar year or, if the parent's income is erratic or information is not available for the immediately preceding calendar year, the parent's actual income during prior calendar years; (3) partial wage information for periods of less than one year; (4) the parent's wage rate at a previous job; (5) the parent's job skills, training, work history, and education; (6) the average wage or salary available to a person in the parent's particular profession or occupation and, if applicable, location; (7) the availability of employment in the area where the parent physically resides; (8) the minimum wage for the area in which the parent physically resides; and (9) any physical or other restrictions on the parent's ability to work.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”²⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. A modification is effective beginning the first day of the next month after CSSD issues notice to the parties that a modification has been requested.³⁰

Here, CSSD had very little information to work with when it made its calculation of Mr. D’s expected income. Mr. D failed to provide any information. The Alaska Department of Labor and Workforce Development did not have records of past employer payment. The income range for self-employed owners of a Company A franchises was too broad to establish a reliable average wage or salary available to a person in that particular profession in Alaska. The COVID-19 pandemic impacted self-employment income for most occupations during the past two years, but a number of federal, state, and industry programs also provided financial support to insulate self-employed individuals from significant financial harm. Given this evidence, the Tribunal concludes CSSD did not err following the regulation as to how to calculate Mr. D’s income at full time minimum wage as directed in 15 AAC 125.050

Ms. H established it was more likely than not that she and Mr. D divided custody with a 70-30 split rather than 50-50. How parents share custody impacts the formula for calculating support per Rule 90.3(b). Therefore, CSSD was requested to provide an updated support calculation using the adjusted divided custody determination. Entering the same numbers for parental income into CSSD’s online child support calculator but including a 70-30 custody split yielded an annual child support payment for Mr. D of \$1,428.00, or \$119.00 per month.

The \$119.00 monthly amount remains less than half the sum voluntarily agreed to and paid as support by Mr. D in 2021. Child support awards are a matter of equity. In the circumstances presented, it would not be equitable for Mr. D to avoid an accurate assessment of his earning potential and substantially reduce the amount of agreed upon child support through the simple expedience of refusing to provide current information regarding his finances. Thus, in this case, the best evidence regarding what Mr. D can afford to pay in child support is the sum

²⁹ AS 25.27.190(e).

³⁰ 15 AAC 125.321(d).

already agreed to by him. Mr. D can file a motion to modify with CSSD, including the relevant financial documents, in the event this calculation does not accurately reflect his earning capacity.

IV. Conclusion

Ms. H met her burden of showing that Mr. D's monthly child support obligation did not accurately reflect the custodial arrangement or his actual earning potential. His obligation is modified through this decision and order.

V. Child Support Order

1. K.D is liable for child support in the amount of \$400.00 per month for one child (N) effective December 1, 2021, and ongoing.
2. All other terms of the Administrative Support Order with Preexisting Arrears dated October 26, 2021, remain in full force and effect.

Dated: June 13, 2022

Signed

Carmen E. Clark
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 28th day of June, 2022.

By: Signed
Carmen E. Clark
Administrative Law Judge

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