

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

IN THE MATTER OF: )  
 )  
M. K. )  
 )  
\_\_\_\_\_ ) OAH No. 08-0183-CSS  
CSSD Case No. 001149733

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of M. K. for the support of T. K. (DOB 12/9/99). The custodian of record is T. M.

Ms. M. initiated this case by filing a request for support services in August, 2007. The Child Support Services Division established Mr. K.'s paternity following genetic testing and issued an amended administrative support order on March 25, 2008, setting support in the amount of \$1,347 per month.<sup>1</sup> Mr. K. appealed, asserting that he should be credited with payments for the support of other children.<sup>2</sup>

The administrative law judge conducted a telephonic hearing on April 28, 2008. Mr. K. and Ms. M. participated and David Peltier represented the division.

Because Mr. K. has not shown that the presumptive support amount of \$1,373 is manifestly unjust, arrears and ongoing support order are set at \$1,373 per month.

**II. Facts**

M. K. immigrated to the United States and moved to Anchorage in 1999. At that time, Mr. K. was the father of four children: a son (born in 1988) and a daughter (born in 1992) who lived with him, another daughter child from a different prior relationship (born in 1993) who lives in London, and T. (born in 1999) from another different relationship, who at that time was also living in London, with her mother, Ms. M.. In addition, Mr. K. had an orphaned niece and nephew (born in 1992 and 1995), the children of his late brother, who live in Sierra Leone and for whom Mr. K. had been the main

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<sup>1</sup> Ex. 11.

<sup>2</sup> Ex. 12.

source of support since 2000, after their parents were killed during the long civil war in that country. Mr. K. has begun adoption proceedings for them.

After he arrived in Anchorage in 1999, Mr. K. obtained a part-time position as an adjunct professor at Charter College, teaching one or two courses in computer science. In February, 2000, he obtained a full-time job as a network administrator for the Anchorage School District. He continued with his part-time position at Charter College.

In 2004, Mr. K. married. His household after he married included his elder daughter (born in 1992) and his son (born in 1988), who was in high school. In order to meet the needs of his own children, his new wife, and his dependent niece and nephew in Sierra Leone, in 2004 Mr. K. increased his work load at Charter College up to three classes a semester. In 2006, Mr. K. and his wife had a child of their own. In 2007, in order to enable his son to receive reduced tuition at Charter College, Mr. K. again increased his work load at Charter College to a full-time position, or four courses per semester. His wife is currently pregnant, due to have their second child in July, 2008.

In 2007, Mr. K. earned wages in 2007 of \$61,958.96 from his job with the school district,<sup>3</sup> \$61,206.68 from his position at Charter College,<sup>4</sup> and \$2,312 from part-time work for Network Business Systems.<sup>5</sup> He received a lump sum distribution from a Roth IRA account of \$1,031.<sup>6</sup> He had gross receipts of \$10,750 and a net tax loss of \$2,834 as a self-employed computer consultant.<sup>7</sup> His total income from wages in 2007 was \$123,165.64.<sup>8</sup> He paid an income tax of \$9,731<sup>9</sup> and made a contribution of \$4,171.94 to his employer-sponsored retirement account.<sup>10</sup>

Until mid-2006, Mr. K.'s wife was employed as a custodian for the Anchorage School District.<sup>11</sup> She is currently a full-time student and expects to obtain a certificate

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<sup>3</sup> Ex. 10, p. 9.

<sup>4</sup> Ex. 10, p. 10.

<sup>5</sup> Ex. 10, p. 11.

<sup>6</sup> Ex. 18, pp. 2 (line 15b), 5, 9, 27.

<sup>7</sup> Ex. 10, pp. 12, 14-15; Ex. 18, p. 32.

<sup>8</sup> See notes 3, 4 ( $\$61,958.96 + \$61,206.68 = \$123,165.64$ ).

<sup>9</sup> Ex. 18, p. 3.

<sup>10</sup> Mr. K.'s contribution to his employer-sponsored retirement account is reflected on his 2007 W-2 form as the difference between his taxable wages (\$57,787.02) and his total wages (\$61,598.96). See Ex. 10, p. 9.

<sup>11</sup> K. Testimony; Ex. 9, p. 27; Ex. 10, p. 40.

as a medical assistant at the end of the current school year. She anticipates returning to work sometime after her child is born and can expect to earn about \$12 per hour.

The K. family lives in a zero lot line residence that they own. The mortgage on the home is \$1,950 per month. Utilities, including natural gas and electricity, cost about \$440 per month. The family spends about \$400 per month on groceries. They own two vehicles, a 2006 Nissan Murano on which they owe \$27,000 and pay a \$497 per month car payment, and a 1993 Ford Taurus which is fully paid for. Gas for the cars costs about \$220 per month and it costs about \$200 per month to insure them. Total household expenses are about \$3,707 per month.

Mr. K. has regularly provided direct cash support to his dependent niece and nephew in Sierra Leone. In addition, he has provided sporadic support for his younger daughter in London, when requested. These payments have averaged around \$400-\$500 per month in recent years.<sup>12</sup>

After allowable deductions (including taxes, retirement contributions, union dues, and support for his prior child in the home), Mr. K.'s adjusted annual income in 2007 was \$82,380.20.<sup>13</sup> His net monthly cash income after those expenses was \$6,856.01.<sup>14</sup> After paying his monthly household living expenses (\$3,707) and providing a monthly stipend of \$500 support for his daughter in London and his niece and nephew in Sierra Leone, his net disposable income was approximately \$2,649.01 per month.<sup>15</sup>

T. M. graduated from college in England in 2005 and immigrated to the United States with T. on April 17, 2007, with plans to work as a legal or medical administrator. Within a month of her arrival, T. was diagnosed with leukemia. In June, Ms. M. married a man she had known for 19 years, the father of her 17-year old son, who had moved to California and connected with his father some two years earlier. Ms. M. lives in California with her husband, their son, and T.

T. has been undergoing chemotherapy treatments since May, 2007, which will continue for about another 18 months. Her medical expenses are covered by MediCal.

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<sup>12</sup> Mr. K. testified he has provided about \$400-\$500 to both his daughter in London and his niece and nephew in Sierra Leone. However, the documentary evidence shows the total amount of transfers was \$21,560 over a period of 57 months (\$378 per month). See Ex. 9, pp. 45-85.

<sup>13</sup> Appendix B.

<sup>14</sup>  $\$82,380.20 \div 12 = \$6,856.01.$

<sup>15</sup>  $\$6,856.01 - (\$3,707 + \$500) = \$2,649.01.$

The chemotherapy reduces T.'s immunosuppressant system. She is at risk of infection or illness, and the home environment must be maintained in a particularly clean and temperature-controlled state. She has been periodically hospitalized for chemotherapy and various complications over the past year.

Due to the need to accompany her daughter to medical appointments, maintain the home environment, and to otherwise provide care for her, Ms. M. is unemployed. She bought a car in order to provide transportation for her daughter to and from medical appointments. Her husband is retired from the United States Air Force and receives a pension of \$1,034 per month. He is employed as a school bus driver and his take home pay (after paying child support for his own children) is about \$1,250-\$1,300 per month, for total household income of about \$2,284-\$2,324 per month. The family rents a one bedroom apartment for \$895 per month. Other household expenses are \$1,706-\$2,326,<sup>16</sup> for total household expenses of about \$2,601-\$3,221. T.'s medical expenses are covered by MediCal, but the family has nonetheless found it necessary to obtain charity aid to pay their rent and otherwise make ends meet.

## **II. Discussion**

### **A. Adjusted Annual Income**

Child support is based upon the obligor's income. Income for child support purposes is determined according to 15 AAC 125.070(a), which provides that the appropriate percentage is applied to "adjusted annual income determined under 15 AAC 125.065." Adjusted income under 15 AAC 125.065(a) is "the parent's total income from all sources determined under 15 AAC 125.030 minus the deductions specified in Alaska Rule of Civil Procedure 90.3(a)(1)."

Total income under 15 AAC 125.030 includes wages and salaries,<sup>17</sup> as well as self-employment income.<sup>18</sup> Lump sum distributions from retirement plans are generally excluded.<sup>19</sup> Income from self employment is not the taxable income from the self-employment, but rather the gross receipts, minus the ordinary and necessary expenses

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<sup>16</sup> M. Ex., p. 36-37. The worksheet totals for the higher end estimate of expenses are incorrect: instead of \$2,296 for "Outgoing Monthly Expenses for T.", the correct total is \$1,776. "Total Expenses" are therefore \$2,326, rather than \$2,846.

<sup>17</sup> 15 AAC 125.030(a)(1).

<sup>18</sup> 15 AAC 125.030(a)(7).

<sup>19</sup> 15 AAC 125.030(b)(1).

required to produce the income.<sup>20</sup> Mr. K.'s 2007 tax return and his W-2 forms show that his total income from wages for his two primary jobs in 2007 was \$123,165.64, and that he had a tax loss from self-employment of \$2,834 that essentially offset his other wages of \$2,312.<sup>21</sup> In the absence of any specific testimony regarding the business expenses claimed on his tax return, Mr. K.'s self-employment income of \$10,750 is disregarded, as is his tax loss of \$2,834. Mr. K.'s total income was thus \$123,164.

In determining Mr. K.'s adjusted annual income for child support purposes, Alaska Civil Rule 90.3(a)(1)(B) requires that his contributions to his retirement account (up to 7.5% of total income) must be deducted. Since Mr. K.'s contribution was only 6.75% of his wages, the full amount of his contribution (\$347.66 per month)<sup>22</sup> is deducted. He is also entitled to deductions for his actual income tax (\$810.92),<sup>23</sup> union dues (\$45.92)<sup>24</sup> and unemployment insurance (\$12.54),<sup>25</sup> and a standard deduction for FICA (\$652.57). He is entitled to an additional deduction (\$1,667) for his prior child in the home, as shown on Appendix A. In 2007, after these deductions and treating his self-employment income as zero, his adjusted annual income was approximately \$82,796.68 (\$6,899.72 per month) and his presumptive support obligation for T. was \$1,373 per month, as shown on Appendix B.

B. Neither Party Has Shown Manifest Injustice

Mr. K.'s primary employment is with the Anchorage School District, and he took on additional work at Charter College in order to support his new family and his extended family in Sierra Leone. He argues that the income from his second job should be disregarded in calculating his child support obligation for T.. Ms. M. responds that T.'s needs are unusual, in that T. has extra living expenses due to her medical needs, and her mother is unable to work due to her illness. Ms. M. argues that Mr. K.'s income from his second job should be included as available income for purposes of child support, and that

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<sup>20</sup> 15 AAC 125.030(c).

<sup>21</sup> Mr. K.'s gross receipts from self-employment were \$10,750. In the absence of any specific testimony regarding the claimed business expenses, Mr. K.'s taxable self-employment loss is accepted as his actual income from self-employment for child support purposes.

<sup>22</sup>  $\$4,171.94 \div 12 = \$347.66$ . See note 10, *supra*.

<sup>23</sup>  $\$9,731 \div 12 = \$810.92$ . See note 9, *supra*.

<sup>24</sup>  $\$551 \div 12 = \$45.92$ . See Ex. 18, p. 17.

<sup>25</sup>  $\$151 \div 12 = \$12.54$ . See Ex. 18, p. 18.

the child support amount should be increased from the standard amount in consideration of his daughter's special circumstances.

The support obligation may be varied if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.<sup>26</sup> The party requesting a variation must provide clear and convincing evidence of manifest injustice.<sup>27</sup> In determining whether manifest injustice exists, all of the relevant circumstances should be considered,<sup>28</sup> including, but not limited to, hardship to subsequent children of the obligor,<sup>29</sup> the relative income of the parties,<sup>30</sup> and, in a modification action, whether the obligor has taken on a second job to better provide for a subsequent family.<sup>31</sup>

The record indicates that the presumptive support obligation of \$1,373 per month is well within Mr. K.'s capacity to pay, in light of his current personal income and the total household expenses, even without any income from his wife and with his voluntary and laudable contributions to the support of his extended family in Sierra Leone. Mr. K. argued that his current income is insufficient in light of his expenses and debt obligations, but the evidence does not support his argument: the preponderance of the evidence is that Mr. K. will have a net cash income of \$1,319.72 per month even after paying all of his household expenses, contributing \$500 per month for the support of his daughter in London and his extended family in Sierra Leone, and paying support to T. in the amount of \$1,373 per month. Mr. K. argued that he could be liable for uncovered medical expenses for T., but the evidence is that all of her medical expenses have been covered, even without his insurance coverage.

Nor did Mr. K. show that the income from his extra work should be disregarded in determining the appropriate support amount for T.. It is true that Mr. K. took on a second job and has increased the time he spends at that job, in order to better support his prior children, current family, and his extended family in Sierra Leone. But his decision to take on that additional job, and to increase his hours there, predated the imposition of a support obligation for T.: he took on his second job before she was born and he increased

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<sup>26</sup> 15 AAC 125.075(a)(2).

<sup>27</sup> 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

<sup>28</sup> *See* 15 AAC 125.080.

<sup>29</sup> 15 AAC 125.075(a)(2)(F).

<sup>30</sup> 15 AAC 125.075(a)(2)(G).

<sup>31</sup> 15 AAC 125.075(a)(2)(H).

his work hours substantially in 2004, before T.'s mother moved to the United States and before his paternity had been established. His income from Charter College has not substantially increased since 2005, even though he has increased his work load there since then.

Because Mr. K. took on the additional work before he acknowledged paternity of or responsibility for T., and paying the presumptive support amount will not cause any apparent hardship to his own family, Mr. K. has not shown that it would be manifestly injustice not to reduce his support obligation from the presumptive amount.

Nor has Ms. M. shown that it would be manifestly unjust not to increase his support obligation. T.'s direct medical expenses are wholly covered. The testimony and evidence establishes that in the absence of any support from Mr. K., the household income is inadequate, but there is not clear and convincing evidence that support at the presumptive amount of \$1,373 per month is manifestly unjust, in light of Ms. M.'s current household income and expenses.<sup>32</sup>

#### **IV. Conclusion**

Mr. K.'s presumptive support obligation is \$1,373 per month. Neither party has shown that the presumptive amount is manifestly unjust.

#### **CHILD SUPPORT ORDER**

The Modified Administrative Child Support and Medical Support Order dated March 25, 2008, is **AMENDED** as follows; in all other respects, the order is **AFFIRMED**:

1. Arrears are due at the rate of \$1,373 per month, from August 1, 2007, through June 30, 2008.
2. Ongoing support is set at the rate of \$1,373 per month, effective July 1, 2008.

DATED: June 16, 2008.

Signed  
\_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>32</sup> Support in the amount of \$1,373 per month is 47.1% of average total current household expenses of \$2,911 (more than 50% of the lower estimate of \$2,601, and more than 42% at the higher estimate of \$3,221). *See* note 12, *supra*. With support in the amount of \$1,373, the total household monthly cash income will be \$3,657-\$3,707 per month, sufficient for all current expenses and an increase in rent for a larger apartment, even at the higher monthly estimate.

## Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8<sup>th</sup> day of July, 2008.

By: *Signed* \_\_\_\_\_  
Jerry Burnett  
Director, Administrative Services

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