

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

IN THE MATTER OF:)
)
J. S. C.) OAH No. 08-0460-CSS
) CSSD Case No. 001123061
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. S. C. for the support of N. C. (DOB 00/00/03) and M. C. (DOB 00/00/02). The custodian of record is H. D.

The Child Support Services Division issued an administrative child support order in 2007 in the amount of \$958 per month. Ms. D. filed a request for modification of the order. The division denied the request and Mr. C. filed an appeal. The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on September 18 and October 15, 2008. Mr. C. participated on both dates. Ms. D. was not available at her telephone number of record on September 18, but she participated on October 15. Andrew Rawls represented the division on both dates.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support is set at \$751 per month.

II. Facts

In 2007, J. C. was living on the Kenai Peninsula and was working in the oil fields on the North Slope of Alaska, earning \$25 per hour. His duties included building scaffolds and some corrosion work. He worked 12 hours per day, seven days a week, on a two weeks on-two weeks off schedule. His annual work income was \$52,085, and his total annual income for child support purposes was \$54,836.¹ Based on that income, the division set his child support order at \$958 per month.

In late May of 2008, Mr. C. transferred from his position on the North Slope to a position on the Kenai Peninsula. Because of the change in his work arrangements, Mr. C.

¹ Ex. 2.

was able to have the children with him for two months during the summer. In his new position, Mr. C. works as a roustabout. He earns \$18 per hour and works a regular 40 hour work week, five days a week. His total annual income in his new position is \$38,844, and his presumptive child support obligation is \$751 per month.²

II. Discussion

Ms. D. filed her request for modification in April, 2008,³ at a time when Mr. C. was still working on the North Slope. In August, 2008, the division declined to modify Mr. C.'s support order, based on his earnings at his prior position on the North Slope.⁴

At the hearing, Mr. C. testified that he had transferred to a position on the Kenai Peninsula in order to spend more time with his children, and he asked that the support obligation be based on his current income. The division argues that Mr. C.'s transfer was a career change that resulted in a reduction of his income and that in order to qualify for a reduction in his support obligation, Mr. C. must show that the career change will ultimately benefit the children, thus justifying a reduction in his child support obligation.⁵

For two children, the presumptive annual child support obligation as determined under 15 AAC 125.070 and the child support guideline is 27% of the actual adjusted annual income.⁶ In this case, Mr. C.'s presumptive support obligation based on his actual income is \$751 per month.⁷ However, if "a parent is voluntarily underemployed" the child support obligation may be based upon potential income.⁸ In determining whether to base the child support obligation on potential income, "if a parent makes a career change, the [division] will consider the extent to which the children will ultimately benefit from the career change."⁹

In this case, Mr. C.'s transfer was not a career change: it was simply a transfer from a one position to another (apparently with the same employer) in the general area of oil field support services.¹⁰ Thus, whether Mr. C.'s children will benefit in the long run from his transfer is not at issue: what is at issue is whether he is underemployed. The

² Ex. 10.

³ Ex. 3.

⁴ Ex. 5; Ex. 6.

⁵ Post-Hearing Brief.

⁶ 15 AAC 125.010, -.065(a), -.070(a). *See* Civil Rule 90.3(a)(2)(A);

⁷ Ex. 10.

⁸ 15 AAC 125.060(a), 065(b).

⁹ 15 AAC 125.060(c).

division argues Mr. C. should be considered underemployed because he is not making as much money as he was when he commuted to the North Slope of Alaska.

A change of jobs that results in a material reduction of income is sufficient to establish a prima facie showing of voluntary underemployment.¹¹ However, a finding of underemployment should only be made when the underemployment is voluntary and unreasonable.¹² Furthermore, a determination of underemployment must be based on consideration of all of the relevant circumstances, “including the parent’s education, training, occupation, health, [and] employment opportunities.”¹³ Whether underemployment, if it exists, is unreasonable likewise depends on all of the circumstances, including whether the obligor’s reduced income is temporary, whether it is the result of economic factors or personal choice, and the children’s needs and the parents’ needs and financial abilities.¹⁴

In this case, there is no evidence that Mr. C. is less than fully employed in light of his education, training, regular occupation, work history and health. The only evidence suggesting underemployment is that alternative employment at higher wages is available to him on the North Slope of Alaska. The higher wages on the North Slope may reflect more difficult working conditions that prevail in that location, and (leaving aside other circumstances) it is not unreasonable for a person to decide that the tradeoff is not worth the extra money.¹⁵ Mr. C. remains fully employed in the same general field of employment, and Ms. D. has not asserted that setting his support order at \$751 per month would leave his children without adequate support.¹⁶ A reduction in his support order to

¹⁰ Compare Olmstead v. Ziegler, 42 P.3d 1102 (Alaska 2002).

¹¹ See Sawicki v. Haxby, 186 P.3d 546, 549 (Alaska 2008) (custodian “met his prima facie burden by showing that [obligor] voluntarily left St. Mary’s to take a job paying approximately half what she earned before.”) (hereinafter, “Sawicki”).

¹² See Civil Rule 90.3(a)(4); Maloney v. Maloney, 969 P.2d 1148 (Alaska 1998).

¹³ 15 AAC 125.060(a).

¹⁴ Sawicki, 186 P.3d at 550, citing Nunley v. State, Department of Revenue, 99 P.3d 7, 11 (Alaska 2004); Patch v. Patch, 760 P.2d 526, 530 (Alaska 1988), Curley v. Curley, 588 P.2d 289, 292 (Alaska 1979).

¹⁵ In Sawicki, the obligor asserted that her change of jobs was reasonable because her former job had required her to travel for between 55%-80% of the time. The master found that the obligor had “intentionally misled the court” regarding her education and that she had failed to substantiate her testimony regarding the amount of travel. 186 P.3d at 548. In this case, by contrast, the difference between employment on the North Slope and on the Kenai is a matter of common understanding in Alaska.

¹⁶ Cf. Maloney v. Maloney, 969 P.2d 1148, 1152 (Alaska 1998) (where obligor voluntarily retired, resulting in reduced income, court should inquire into the custodial parent’s ability to support child if the obligor established grounds for reduction in support order).

reflect his actual income will alleviate the additional cost to him of providing extended visitation in the summer.¹⁷ Mr. C. is not unreasonably underemployed.

Because he is not unreasonably underemployed, Mr. C. need not demonstrate that his job transfer will ultimately benefit his children. Rather, his child support obligation should be determined based on his actual income unless there is clear and convincing evidence of unusual circumstances (*e.g.*, special needs, custodial parent disability, reasonable reliance on increased support) that make the presumptive support obligation manifestly unjust. In this case, there no showing of manifest injustice, and the presumptive support obligation is therefore appropriate.

IV. Conclusion

The child support obligation as calculated under 15 AAC 125.070 and the child support guidelines of Alaska Rule of Civil Procedure 90.3 is more than 15 percent less than the existing order. The support order should therefore be modified to reflect current actual income.¹⁸ There is good cause to move the effective date of the modification forward to the first day of the month after he changed his job.

CHILD SUPPORT ORDER

1. The denial of modification review is REVERSED.
2. Mr. C.'s modified ongoing child support is set at the rate of \$751 per month effective June 1, 2008.

DATED: December 10, 2008.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

¹⁷ See 15 AAC 125.075(d)(1); Civil Rule 90.3(a)(3) and Commentary at IV(B).

¹⁸ 15 AAC 125.321(b)(1). See Civil Rule 90.3(h)(1).

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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of December, 2008.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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