

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0064-CSS
M. D. B.	)	CSSD No. 001151683
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, M. D. B., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 9, 2009. The Obligee children are D., DOB 00/00/91, and G., DOB 00/00/96.

The formal hearing was held during several sessions beginning on February 25, 2009. Dr. B. appeared in person; the Custodian of record, S. C. B., also appeared in person, represented by counsel, Robert Woofter. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded. The record closed on May 28, 2009.

After careful consideration, and based on the record as a whole and the provisions of Civil Rule 90.3, Dr. B.'s child support is set at \$5,000 per month for G., taking into consideration he had custody of D. from September 1, 2008, until he emancipated.

**II. Facts**

**A. History**

Ms. B. applied for child support services on December 28, 2007.<sup>1</sup> Dr. B.'s child support obligation was determined by the court in an August 22, 2007 domestic violence order that expired in October 2008.<sup>2</sup> Thus, his child support order in this administrative child support action is effective November 1, 2008.

On January 9, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Dr. B.'s child support at \$2,250 per month for two children and \$1,667 per month for one child, effective February 1, 2009, with arrears of \$6,750 for the period from

---

<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 9 at pg. 1.

November 2008 through January 2009.<sup>3</sup> Dr. B. appealed and requested a formal hearing on February 9, 2009.<sup>4</sup> He asserted D. has lived with him since September 1, 2008, and G. stays with him every other weekend and on Tuesdays and Thursdays.<sup>5</sup>

**B. Material Facts**

Dr. B. and Ms. B. were married in 1983 and are currently litigating a divorce action.<sup>6</sup> They have five children, but the two youngest, D. and G., are the only children for whom support is due in this administrative child support action. The parties agree that D. has been living with Dr. B. in his home since September 1, 2008. G. has been living primarily with Ms. B., but she spends every other weekend and Tuesday evenings with Dr. B.

Dr. B. is a plastic surgeon specializing in No Name surgery. Ms. B., formerly a nurse when the parties married, has been a stay-at-home mother during the parties' marriage and currently has no marketable job skills. During the course of their marriage, Dr. B. controlled the parties' finances and limited Ms. B.'s access to their financial information.

Transcripts provided by the IRS indicate that during the last few years, Dr. B.'s taxable earnings from his medical practice totaled:

2004	\$542,341	Exh. 10 at 39
2005	\$517,748	Exh. 10 at 29
2006	\$592,630	Exh. 10 at 19 <sup>7</sup>

After Ms. B. filed for divorce, Dr. B. abruptly abandoned his medical practice in November 2007 and left the country. He did not tell Ms. B. he was leaving or where he was going; she was forced to report him to the police as a missing person. Dr. B. traveled throughout the world, spending time in Central or South America. While absent from Alaska, he worked as a volunteer providing medical services for people in poverty stricken areas for free.

Although the proper venue to litigate most of these issues is the parties' divorce proceeding, it should be noted that Dr. B.'s continued refusal over the years to allow Ms. B. access to their assets and financial information severely limited her ability to provide for G.'s

---

<sup>3</sup> Exh. 11.

<sup>4</sup> Exh. 6.

<sup>5</sup> Exh. 12.

<sup>6</sup> Affidavit of S. B. at 1.

<sup>7</sup> The average of these figures is \$550,906.33, as shown in this calculation:  $\$542,341 + \$517,748 + \$592,630 = \$1,652,719 \div 3 = \$550,906.33$ .

support after the parties separated. The family home, in which Ms. B. and G. continued to reside, became barely livable.<sup>8</sup> Dr. B. was not paying the household bills nor had he arranged for their payment during his absence. As a result, the utilities were turned off and Ms. B. had to heat the home with portable electric heaters and leave the temperature setting at 58 degrees during the winter of 2007-2008. Ms. B. was forced to apply for public assistance and food stamps and eventually she was able to obtain charitable help to get the utilities working again. The home, however, remains in dismal shape.

Ms. B. obtained a court order authorizing her to gain access to Dr. B.'s post office box that held checks payable to him and use the funds. Dr. B.'s claim that she committed a felony by breaking into his post office box is without merit.<sup>9</sup>

During his absence from Alaska, Dr. B. secreted assets out of the country. Ms. B., who has not known the extent of the parties' assets, has been able to ascertain that at a minimum, Dr. B. removed over \$1.7 million from the Bank of Texas and deposited it in another financial institution with holdings offshore.<sup>10</sup> Dr. B. testified he "invested" the money and cannot get access to it at this time. He shows no remorse in the negative impact his actions have had on his family, particularly G.

After he returned from his travels, Dr. B. began working again but on a much more limited schedule. He allowed his malpractice insurance to lapse and claims he had no income in 2008. He refuses to pay child support and in fact, insists Ms. B. should pay him for supporting D.

### **III. Discussion**

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support obligation is to be calculated from his or her "total income from all sources." By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).<sup>11</sup> In this case, Ms. B. requested child support services in December 2007, but a court order dictated Dr. B.'s child support obligation through October 2008, so November 2008 is the first month Dr. B. is obligated to pay

---

<sup>8</sup> This is why D. left the family home and went to live with Dr. B. in September 2008.

<sup>9</sup> See Affidavit of S. B.

<sup>10</sup> Exh. 5 at pg. 4.

<sup>11</sup> 15 AAC 125.105(a)(1)-(2).

support in this administrative child support action. The person requesting the hearing, in this case, Dr. B., has the burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>12</sup>

The obligor has the burden of proving his or her earning capacity.<sup>13</sup> If CSSD finds a parent to be voluntarily and unreasonably unemployed or underemployed, it may calculate the child support amount from the parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."<sup>14</sup>

The prerequisite for imputing income to an obligor is that CSSD must first make a finding that the parent is voluntarily and unreasonably unemployed or underemployed.<sup>15</sup> CSSD's order did not include such a finding, but the division used average annual wage figures to calculate Dr. B.'s child support, so this suggests an implicit finding of voluntary unemployment.

In cases in which CSSD is claiming voluntary unemployment, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."<sup>16</sup> If the parent is voluntarily unemployed or underemployed, it is also necessary to determine whether the parent's unemployment is unreasonable. An integral part of the analysis is whether the parent's lack of employment is a result of "economic factors," as in being laid off, or of "purely personal choices."<sup>17</sup> 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 noncustodial parent.<sup>18</sup>

The Alaska Supreme Court further explained the essence of the analysis in *Beaudoin v. Beaudoin*<sup>19</sup> 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

---

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>14</sup> Civil Rule 90.3(a)(4).

<sup>15</sup> The agency's form orders allow a caseworker to check a box in the section for findings of fact, as in its Amended Administrative Child Support and Medical Support Order. See Exhibit 5 at pg. 4.

<sup>16</sup> *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

<sup>17</sup> *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

<sup>18</sup> *Kowalski*, 806 P.2d at 1371.

<sup>19</sup> 24 P.3d 523 (Alaska 2001).

parent is capable of earning.” 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 rule's 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.<sup>[20]</sup>

The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support “shall consider the totality of the circumstances in deciding whether to impute income.”<sup>21</sup>

### C. Analysis

Based on the “totality of the circumstances,” the evidence in this appeal shows that Dr. B. is voluntarily and unreasonably underemployed. He was unexplainably absent from the country for several months during 2007-2008, during which time he removed a significant amount of money from U.S. control and deposited it offshore. He worked as a volunteer doctor for part of the time, yet upon his return did not resume full-time work in Alaska, claiming his insurance was a problem. Dr. B.’s absence and reduction in his employment was conduct undertaken voluntarily “for the purpose of becoming or remaining unemployed.”<sup>22</sup> His lack of income is not primarily a result of "economic factors" but of unreasonable personal choices.

Dr. B. had average income exceeding \$550,000 in the three years prior to 2007. Were that figure to be inserted into CSSD’s online child support calculator, it would yield adjusted annual income of \$368,925.12. If a standard one-child (20% of adjusted annual income) support calculation were performed with that figure, it would result in an annual child support amount of \$73,785, or \$6,148 per month. It is therefore not unreasonable to set Dr. B.’s child support at \$5,000 per month for one child, effective November 1, 2008. Although this case is technically a divided custody case, with each party having custody of one child, there is no standard calculation available at Dr. B.’s income levels. The reduction to \$5,000 per month reflects Dr. B.’s custody of D. until the child emancipated on April 28, 2009.

---

<sup>20</sup> *Beaudoin*, 24 P.3d at 528 (emphasis in original).

<sup>21</sup> Civil Rule 90.3, Commentary III.C.

<sup>22</sup> *See Bendixon*, 962 P.2d at 172.

**IV. Conclusion**

Dr. B. is voluntarily and unreasonably underemployed at this time. Based on the record as a whole, his child support should be set at \$5,000 per month for one child, effective November 1, 2008 and ongoing.

**V. Child Support Order**

- Dr. B. is liable for child support of \$5,000 per month, effective November 1, 2008, and ongoing;
- All other provisions of the January 9, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 4th day of June, 2009.

By: Signed  
 Kay L. Howard  
 Administrative Law Judge

**Adoption**

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

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

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

DATED this 22nd day of June, 2009.

By: Signed  
 Signature  
Kay L. Howard  
 Name  
Administrative Law Judge  
 Title

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