

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

IN THE MATTER OF:)
)
T. T. T.)
)
_____) OAH No. 09-0081-CSS
CSSD Case No. 001127818

DECISION AND ORDER

I. Introduction

This case concerns the obligation of T. T. T. for the support of S. T. T. (DOB 00/00/2000). The custodian of record is S. C. T.

On August 23, 2004, the Child Support Services Division issued a child support order in the amount of \$389 per month. On August 15, 2008, Ms. T. requested modification of the order. On January 26, 2009, the division issued a modified administrative child support order in the amount of \$535 per month, effective September 1, 2008. Mr. T. filed an appeal and requested an administrative hearing.

The Office of Administrative Hearings conducted a telephonic hearing on March 5, 2009. Both Mr. T. and Ms. T. participated and provided testimony. Andrew Rawls represented the division.

Mr. T. does not dispute the income attributed him. He argues that imposition of the presumptive support obligation is manifestly unjust. Because Mr. T. did not provide clear and convincing evidence that the presumptive amount is manifestly unjust, modified ongoing support is set at the presumptive amount. However, because he showed good cause for moving the effective date of the modification forward, the effective date of the modified order is advanced to February 1, 2009.

II. Facts

T. T. lives with his wife and their two children, ages 9 (his wife's biological child, adopted by Mr. T.) and four months. In 2008, Mr. T. earned about \$39,336 with monthly take-home pay (prior to child support) of about \$1,800.¹ His 2008 total income, including his Alaska Permanent Fund dividend, was about \$42,605.² His wife is

¹ Exhibit 5, page 6. At the hearing, Mr. T. agreed that the division had correctly calculated his income and testified that his monthly net income is about \$1,800 before child support.

² \$39,336 (wages) + \$2,069 (Alaska Permanent Fund dividend) + \$1,200 (energy rebate) = \$42,605.

employed and earns about \$4,000 per month gross, and her total 2008 income was about \$51,269; her monthly take home pay was about \$2,200 per month.³ The total household income in 2008 was about \$93,874,⁴ with monthly net income of about \$4,545 per month (exclusive of child support payments).⁵

The household rent is \$875 per month, including heat and water. The food cost is about \$600 per month. Electricity is \$142 per month. Trash is \$42 per month. Telephone, cable TV and Internet service comes to \$300 per month.⁶ The couple own two vehicles, a 2005 Dodge Stratus with a payment of \$361 per month and a 2008 Ford Escape with a payment of \$440 per month. Expenses for the two vehicles total about \$605 per month.⁷ Renters' insurance is \$20 per month and health insurance is \$235 per month. The household spends about \$100 per month on entertainment and \$100 per month on personal care items. Child care costs \$620 per month. These household expenses total about \$4,440 per month. The household debts include medical bills of \$1,600 being paid at \$68 per month,⁸ credit card debt in excess of \$5,800 with monthly payments of about \$208 per month,⁹ student loans of \$91,000, being paid at least \$275 per month,¹⁰ and other debts in collection at the rate of \$269 per month.¹¹ Total household debt is in excess of \$98,400; monthly payments are at least \$820 per month.

³ Mr. T. testified to these amounts. *See also* Exhibit 7.

⁴ \$42,605 + \$51,269 = \$93,874.

⁵ \$1,800 + \$2,200 + \$545 (both parents' Alaska Permanent Fund dividends and energy dividend, \$6,538, divided by 12) = \$4,545. Excluded from total household income for purposes of calculating child support are the two children's Alaska Permanent Fund dividends and energy dividends, which totaled another \$6,538 in 2008.

⁶ Mr. T. testified that Internet service is \$53 per month, telephone service is \$132 per month (\$25 for local service and \$107 for cellular service), and cable TV is \$115 per month. *See also* Exhibit 7.

⁷ Mr. T. testified to the monthly automobile costs, which he stated included car payments (\$361 and \$440), gasoline (\$200) maintenance (\$150), insurance (\$155), and a warranty (\$100).

⁸ Mr. T. provided documentation indicating that the medical debt is largely, if not entirely, for services provided in connection with the birth of their child.

⁹ Mr. T. testified that his credit card debt is about \$5,800, with monthly payments of \$128, and that his wife makes monthly credit card payments of \$80 (\$65 + \$15) per month. *See also* Exhibit 7 (credit card debt of \$5,000; monthly payments of \$120.00).

¹⁰ Mr. T. testified that he has an outstanding student loan of \$11,000 on which he pays \$75 per month, and that his wife is paying \$600 per month on her student loan; she has outstanding student loans totaling \$80,000, according to Exhibit 7. A student loan payment stub submitted by Mr. T. shows a balance of \$42,125.04, with a prior payment of \$200 and a payment due of \$575. The regularly scheduled amount is not indicated, but another document submitted by Mr. T. shows an automatic transfer of \$200 for a student loan. On balance, the record suggests that Ms. T.'s regularly scheduled monthly payment is \$200, not \$600.

¹¹ Mr. T. testified that his wife has a monthly bill of \$269 in collection.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹² that is, total income after allowable deductions.¹³ In this case, Mr. T.'s total income in 2008 was about \$42,605. The division provided a deduction of \$147.33 per month for Mr. T.'s contributions to retirement, in addition to standard deductions.¹⁴ With those deductions, his presumptive child support obligation for 2008 is \$549 per month, as shown on Appendix A. His presumptive obligation for 2009 is \$535, as shown on Exhibit 5, page 6.

The presumptive support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.¹⁵ The obligor must provide clear and convincing evidence of manifest injustice.¹⁶ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.¹⁷

Mr. T. testified that the monthly household expenses are approximately \$4,440 per month, which is just under the monthly net income of \$4,545 per month. Coupled with the existing debt payments of at least \$820 per month, and the existing child support obligation of \$361 per month, the evidence indicates that the household cannot sustain its current level of expenditures, which is substantially greater than its available monthly net income. Imposition of the presumptive amount will increase Mr. T.'s child support obligation by about \$150 per month, and will make it even less feasible to maintain the current level of expenditures.

Nonetheless, Mr. T. had not requested a downward modification of the prior order and he has been meeting his current obligation of \$361 per month, and an increase of about \$150 per month is relatively small in relation to his total monthly income. Furthermore, the evidence indicates that the household's current level of expenditures can

¹² 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹³ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁴ Exhibit 5, page 6. S. T. argues that this deduction should not be allowed because it is a voluntary contribution. However, Alaska law expressly provides a deduction for voluntarily contributions to retirement, up to 7.5% of gross income. See 15 AAC 125.065(a); Civil Rule 90.3(a)(1)(B).

¹⁵ 15 AAC 125.075(a)(2).

¹⁶ 15 AAC 125.075(a); see Civil Rule 90.3(c)(1).

¹⁷ See 15 AAC 125.080.

be reduced without causing substantial hardship to Mr. T.'s subsequent children.¹⁸ In addition, the apparent shortfall in the household income disregards the children's income from their Alaska Permanent Fund and energy dividends. For these reasons, Mr. T. did not provide clear and convincing evidence that the presumptive amount is manifestly unjust.

Generally a modification order is effective on the first day of the month after service of the petition for modification.¹⁹ However, the effective date may be advanced upon a showing of good cause.²⁰ In this case, in light of the substantial shortfall in currently available income, adjusting the household finances to accommodate an increased child support obligation will take some time. In order to provide for the adjustment, there is good cause to advance the effective date of the modified order to February 1, 2009, the first day of the month after the division issued the modified order.

IV. Conclusion

The presumptive support obligation has changed by 15% or more, and should not be reduced from the presumptive amount. The order should be modified to reflect current income, with a delayed effective date to allow for necessary adjustments to current household expenditures. The division should provide the appropriate credit for medical insurance premiums paid by Mr. T.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated January 26, 2009, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated January 26, 2009, is **AFFIRMED**:

Modified ongoing support is set at \$535 per month, effective February 1, 2009.

DATED: April 27, 2009.

Signed

Andrew M. Hemenway
Administrative Law Judge

¹⁸ It is noteworthy that the total monthly cost for vehicles, both of which were recently purchased, is \$1,406: nearly four times greater than the child support obligation that was already in existence when the vehicles were purchased. Mr. T. did not provide any evidence or argument that the cost of owning and operating the vehicles cannot reasonably be reduced.

¹⁹ 15 AAC 125.321(d).

²⁰ State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

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 15th day of May, 2009.

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

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