

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

IN THE MATTER OF)
)
L. R.) Case No. OAH-09-0177-CSS
) CSSD Case No. 001137086

DECISION & ORDER

I. Introduction

The obligor, L. R., appeals a decision issued by the Child Support Services Division (CSSD) on February 20, 2009, to deny his request for modification of his child support order. Mr. R. appeared by telephone at a hearing held on April 14, 2009, as did the custodian, I. H.. Andrew Rawls represented CSSD. The children are K. R. (DOB 00/00/03) and L. R. (DOB 00/00/00).

CSSD's decision is affirmed.

II. Facts

Mr. R.'s current support amount was set at \$661 per month for two children in 2005.¹ That calculation was based on annual gross income of \$35,954.93 and adjusted annual income of \$29,382.53.² Mr. R. is an experienced auto mechanic. He has worked at several auto dealers and repair shops, but it has been several years since he has worked for anyone else as a mechanic. Mr. R. testified that he has applied for jobs as a mechanic, but the offers he has received have been for entry level positions earning about \$9.00 per hour, which Mr. R. does not feel is enough to live on. Mr. R. testified that it has been about a year and a half since he last worked for a repair shop, at a Volvo dealership; he also testified that it has been about a year and a half since he worked full-time for Costco as a night stocker. Mr. R. testified that he quit working for Costco after about a year because he did not feel there was any opportunity for advancement. Mr. R. earned \$10.50 per hour at Costco and worked full-time. Currently, Mr. R. works independently out of his home repairing vehicles. Mr. R. testified that last month he worked on two-and-a-half cars, that his shop rate is \$50 per hour, that although he gets jobber rates he does not mark up parts and that he earns about \$500 to \$1000 per month.

Mr. R. also testified about his current household and living expenses. Mr. R. lives with his girlfriend in a house that she is buying, with a mortgage bill of about \$2,400 per month. Mr. R. testified that his girlfriend earns about \$2,000 per month, but that she works on commission

¹ Exhibit 1.

² Exhibit 1, page 8.

and her income varies. Mr. R. estimated monthly household expenses of about \$1,400 per month in addition to the mortgage, plus \$220 per month in car insurance, \$80 per month in car maintenance, and \$240 per month in gasoline. Mr. R. testified that he drives a 2005 Dodge Magnum and a 2006 Lincoln, but the vehicles are not his and he does not pay for them.

Mr. R. testified that he owes \$103,770 in medical expenses for an injury sustained some time ago during an altercation in Arizona, and that he makes payments of \$625 per month. Mr. R. testified that even though he owes over a hundred thousand dollars in medical debt, makes payments that exceed his entire child support obligation, and has no significant assets and little income, he is not willing to declare bankruptcy: “I didn’t take the easy way out with filing Chapter 7 or Chapter 11, and I’m actually responsible enough to take care of the finances I acquired with Ms. H., you know I’m taking care of that as far as, on my own.”

Mr. R. also testified that he sometimes spends about \$500 to \$600 per month on tools for his car repair business, as needed, but has no other business expenses. Ms. H. submitted a copy of a tax return for Mr. R. from 2003, showing that he had \$40,887 in wages that year.

III. Discussion

A child support obligation may be modified upon a showing that there has been a material change in circumstances; a material change of circumstances is presumed if the amount of support due under the current circumstances is fifteen percent more than or less than the amount of the existing order.³ The person requesting the hearing, in this case Mr. R., has the burden of demonstrating that CSSD’s decision was incorrect.⁴

In a primary custody case, support for two children is calculated as 27 percent of the obligor’s annual income from all sources, after adjusting for various expenses such as taxes and retirement contributions.⁵ In the event an obligor is voluntarily and unreasonably underemployed, support may be calculated based on potential income, determined by the obligor’s work history, qualifications, and job opportunities.⁶

Determining Mr. R.’s precise income at this point is not possible with the evidence in the record. Mr. R. testified that he makes all of his income now working on “side jobs.” These jobs consist of repairing vehicles in the garage of the house he lives in. Working on cars out of his girlfriend’s house appears to have been Mr. R.’s primary source of income for over a year; Mr.

³ Civil Rule 90.3(h).

⁴ 15 AAC 05.030(h).

⁵ Civil Rule 90.3(a)(1)-(2). A preponderance of the evidence shows that Ms. H. exercises primary custody.

⁶ Civil Rule 90.3(a)(4).

R. testified that he earns between \$500 and \$1,000 per month from this business. Even at the part-time level that Mr. R. described, this work appears more in the nature of a regular business than an occasional side job. Yet, Mr. R. has provided no documentation or accounting for this business other than rough estimates of his income made at the hearing. \$500 to \$1,000 per month would result in income of \$6,000 to \$12,000 per year, but it is not clear if Mr. R. offered these figures as gross or net. Presumably, because he spends \$500 to \$600 per month for tools, these figures constitute estimated net. Mr. R.'s characterization of this work as "side jobs" suggests that this repair business is a side venture that would be compatible with full-time work.

Mr. R. quit his job at Costco, earning \$10.50 per hour, because he was dissatisfied with his prospects for increased wages. He has also declined jobs paying around \$9.00 per hour because he regards that salary as too low. There seems to be no dispute that Mr. R. could earn at least \$10.50 per hour working full-time if he chose to. Annually, this would result in income of \$21,840. If Mr. R.'s side business produced \$750 per month, the average of his estimates of from \$500 to \$1,000 monthly, the annual income would be \$9,000. Thus, by Mr. R.'s own estimates, he appears to be capable of earning at least \$30,840 per year plus PFD income. Using default tax amounts provided by CSSD's online child support calculator,⁷ which may overstate how much Mr. R. pays in income tax for his business earnings, this level of income would result in a child support obligation of \$614 per month for two children. While less than Mr. R.'s current amount of \$661 per month, the change would be less than fifteen percent, and would therefore not constitute a material change in circumstances meriting a modification.

IV. Conclusion

Mr. R. has not met his burden of demonstrating that a material change in circumstances has occurred that would warrant modification of the existing child support order. CSSD was correct to deny the modification request.

⁷ <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>
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V. Order

IT IS HEREBY ORDERED that the decision issued by the Child Support Services Division (CSSD) on February 20, 2009, to deny Mr. R.'s request for modification of his child support order be AFFIRMED

DATED this 17th day of April, 2009.

By: Signed _____
DALE WHITNEY
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 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 11th day of May, 2009.

By: Signed _____
Signature
Dale Whitney _____
Name
Administrative Law Judge _____
Title

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