

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

IN THE MATTER OF	)	OAH No. 09-0433-CSS
E. W. S.	)	CSSD No. 001140035
	)	
_____	)	

**CHILD SUPPORT DECISION AND ORDER**

**I. Introduction**

On September 9, 2009, a formal hearing was held to consider the child support obligation of E. W. S. (Obligor) for the support of his child, G. (Obligee).<sup>1</sup> Mr. S. appeared. The custodial parent, L. A., also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on September 23, 2009.

This case is Mr. S.'s appeal of the Division's modification of his child support order for G. Having reviewed the record in this case and after due deliberation, I concluded the Division's Modification of Administrative Support Order on July 23, 2009, should be upheld and Mr. S.'s modified ongoing child support should be set at \$1,247 per month effective February 1, 2009.

**II. Facts**

**A. History**

Mr. S.'s monthly child support obligation was \$675 per month.<sup>2</sup> The Division reviewed this child support order at Ms. A.'s request. The Division issued a Notice of Petition for Modification on January 26, 2009.<sup>3</sup>

Mr. S. provided his income information as ordered.<sup>4</sup> The Division issued a Modification of Administrative Support Order on July 23, 2009.<sup>5</sup> The Division determined that Mr. S.'s ongoing monthly child support should be increased to \$1,247 per month effective February 1,

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.

<sup>2</sup> Ex. 1.

<sup>3</sup> Ex. 3.

<sup>4</sup> Ex. 4.

<sup>5</sup> Ex. 6.

2009.<sup>6</sup> The Division based its calculation of Mr. S.'s modified ongoing monthly child support on his reported 2008 income.<sup>7</sup> Mr. S. requested a formal hearing.<sup>8</sup>

## **B. Findings**

Based on the evidence in the record, I find that it is more likely than not that the Division's calculations at Ex. 7 are correct. Based on the evidence in the record, I also find that it is more likely than not this child support calculation is based on the best estimate of Mr. S.'s income.<sup>9</sup>

## **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. S., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>10</sup>

At the hearing, Mr. S. explained that he wanted to pay the correct amount of child support, but did not understand why the Division had not given him a deduction for the \$9,358.19 in unreimbursed employee expenses that he claimed on his tax return.<sup>11</sup> Mr. S. explained that he is a union crane operator who is often hired on for specific jobs at worksites far from his home in Kodiak, Alaska. Mr. S. must sometimes provide his own special flame-resistant arctic work clothing, and his employers sometimes do not reimburse all of his travel expenses. Mr. S. carefully keeps track of these unreimbursed expenses and deducts them from his income for tax purposes.<sup>12</sup>

The Alaska Supreme Court has refrained from adopting a bright line test that all expenses recognized by the IRS are similarly recognized as deductible from income in calculating child support under Alaska Civil Rule 90.3. Instead of a hard and fast rule, the determinative factor as to whether a claimed expense is deductible under Rule 90.3 is whether it is an "ordinary and necessary expense required to produce the income" and whether the allowance of such an expense would defeat the goals of Civil Rule 90.3.<sup>13</sup>

Mr. S.'s claimed expenses may or may not be tax deductible as unreimbursed employee expenses. The fact that these expenses would not have been incurred "but for" Mr. S.'s trade is

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<sup>6</sup> Ex. 6 & 7.

<sup>7</sup> Ex. 6, page 6.

<sup>8</sup> Ex. 7.

<sup>9</sup> Recording of Hearing, Ex. 7.

<sup>10</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>11</sup> Recording of Hearing.

<sup>12</sup> Recording of Hearing & Ex. A -Mr. S. 2008 Tax Return, Schedule A.

not necessarily sufficient to allow even a tax deduction. For example, travel away from one's "home" for business is an allowable tax deduction, but "home" under the tax code does not have its usual and ordinary meaning. In fact, "home" in the usual case, means "where you work."<sup>14</sup> If a taxpayer chooses to maintain his residence at a place far removed from his regular place of business, the travel expenses may not be "ordinary and necessary" since they are not dictated by business needs.<sup>15</sup>

I conclude that under *Neilson*, even if Mr. S.'s claimed \$9,358.19 in unreimbursed employee expenses are tax deductible, these expenses are not deductible from his income for calculating child support. Allowance of these expenses would defeat the goals of Alaska Civil Rule 90.3, which allows only a very limited number of deductions from income in calculating child support.<sup>16</sup> Mr. S. is able to claim these deductions for tax purposes only because he itemizes. Taxpayers claiming the standard deduction do not receive a corresponding deduction in their child support calculation. Furthermore, Mr. S.'s trade sometimes puts him to unusual expenses, but when he experiences these expenses he also realizes some unusual savings. His away from home employers provide his room and board while he is at the worksite. Mr. S.'s must realize some savings as the result of the fact that some of his employers feed him while he is living at the worksite.

Ongoing child support should be calculated based on Mr. S.'s estimated future income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a).

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>17</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.<sup>18</sup> The evidence in the record shows that a material change of circumstances has occurred since Mr. S.'s ongoing child support was set at \$675 per month.

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<sup>13</sup> *Neilson v. Neilson*, 914 P.2d 1268 (Alaska 1996)

<sup>14</sup> *Putnam v. United States*, 32 F.3d 911, 917 (5th Cir.1994).

<sup>15</sup> *Commissioner v. Stidger*, 386 U.S. 287, 298(1967).

<sup>16</sup> Alaska Civil Rule 90.3, Commentary D.

<sup>17</sup> Alaska Civil Rule 90.3(h)(1).

<sup>18</sup> Alaska Civil Rule 90.3, Commentary X.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification should be effective February 1, 2009, because the petition was served in January of 2009.<sup>19</sup>

**IV. Conclusion**

Mr. S.'s ongoing child support should be modified. Based on his current income, a modified support amount would alter the outstanding support order by 15 percent. Mr. S.'s modified ongoing child support should be set at \$1,247 per month, effective February 1, 2009.

**V. Child Support Order**

The Division's Modified Administrative Child and Medical Support Order issued on July 23, 2009 is affirmed.

DATED this 2nd day of October, 2009.

By: Signed \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

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<sup>19</sup> Alaska Regulation 15 AAC 125.321.

**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 23rd day of October, 2009.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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