

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

IN THE MATTER OF: )

R. W. S. )

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OAH No. 09-0654-CSS

CSSD No. 001128333

**DECISION AND ORDER**

**I. Introduction**

The Obligor, R. W. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on November 3, 2009. The Obligee children are D., J. and H., who are 14, 12 and 8 years of age.

The hearing was held on December 29, 2009. Both Mr. S. and the custodian of record, I. L.-S., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on December 29, 2009.

Based on the record and after due deliberation, CSSD’s November 3, 2009, Modified Administrative Child Support and Medical Support Order is affirmed.

**II. Facts**

**A. Background**

Mr. S.’s child support obligation for D., J. and H. was set at \$213 per month in January 2004.<sup>1</sup> Ms. L.-S. requested a modification on April 7, 2009.<sup>2</sup> On April 24, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Neither party provided financial information.<sup>4</sup> On November 3, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S.’s ongoing child support to \$785 per month, effective May 1, 2009.<sup>5</sup> Mr. S. appealed on December 4, 2009,

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

<sup>2</sup> Exh. 2.

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

<sup>4</sup> Pre-hearing brief at pg. 1.

<sup>5</sup> Exh. 4.

asserting primarily that he is no longer employed and that he should not have to pay support for D. because the child does not live with Ms. L.-S.<sup>6</sup>

### **B. Material Facts**

Mr. S. lives with his girlfriend, T., and they have two children in the home, born in 2005 and 2008. T. is currently employed on a part-time basis and earns about \$200 per week. T. is buying the home they live in and pays \$100 per month for the mortgage. Mr. S. testified T. was scheduled to go into treatment on January 2, 2010, and he had to quit his job in order to take care of the children because he could not get adequate child care. He quit his job on November 2, 2009. Mr. S. earned \$33,335.31 during the last four consecutive quarters – from the fourth quarter of 2008 through the third quarter of 2009 – as reported to the Alaska Department of Labor and Workforce Development.<sup>7</sup> Mr. S. has regular household expenses of approximately \$1,945 per month. He participates in subsistence activities.

Ms. L.-S. has regular household expenses of approximately \$1,270 per month. The oldest child, D., splits time between her home and the homes of Mr. S.'s sister and mother. Ms. L.-S. receives Medicaid and food stamps and has informed her caseworker that D. spends time with his paternal relatives. The two younger children in this case, J. and H., live full-time with Ms. L.-S. On December 1, 2009, she started working at the school, where she earns \$14.80 per hour for five hours of work per day.

### **III. Discussion**

#### **A. Mr. S.'s income**

A parent is obligated both by statute and at common law to support his or her children.<sup>8</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>9</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the 15% change has not been met, CSSD may, but is not required, to modify the child support

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

<sup>7</sup> Affidavit of Andrew Rawls dated December 29, 2009.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> AS 25.27.190(e).

obligation. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>10</sup>

Mr. S.'s child support was set at \$213 per month for three children in 2004. In response to Ms. L.-S.'s petition for modification, CSSD used Mr. S.'s last four consecutive quarters of earnings as reported to the Alaska Department of Labor and Workforce Development to determine his total annual income is \$33,335.31, plus the PFD.<sup>11</sup> This income amount yields a child support amount of \$785 per month for three children.<sup>12</sup> This calculation appears to be correct and it meets the necessary 15% difference that supports a modification of a child support order.

### **B. Financial hardship**

Mr. S.'s primary issue on appeal is that he cannot afford the child support amount calculated by CSSD from his actual income. Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>13</sup> The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .<sup>[14]</sup>

It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).<sup>15</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. S. did not prove by clear and convincing evidence

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<sup>10</sup> 15 AAC 125.321(d). In this case, the notice was issued on April 24, 2009. Exh. 3.

<sup>11</sup> Exh. 4 at pg. 6.

<sup>12</sup> *Id.*

<sup>13</sup> Civil Rule 90.3(c).

<sup>14</sup> Civil Rule 90.3(c)(1).

<sup>15</sup> *See* Civil Rule 90.3, Commentary VI.E.1.

that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied.

Mr. S. is currently unemployed, but there is insufficient evidence in the record to prove that his unemployment is anything other than a temporary circumstance. Mr. S. did not want to share details about his personal life, which is understandable, but it is that kind of information that assists the administrative law judge in determining whether to reduce a parent's child support obligation. Mr. S. did eventually reveal that he quit his job because his girlfriend T. was going into treatment and he had to provide child care for their two young children while she was gone. However, this testimony is not totally consistent with the other evidence he provided. Mr. S. said T. was going into treatment on January 2, 2010, but he quit his job on November 2, 2009, two months before her treatment was scheduled to begin. Moreover, T. was at work on the day of the hearing, so there did not appear to be any current health issues for her at the time of the hearing. Given the disparity in their incomes, it was not reasonable for Mr. S. to be off work instead of T. When she returns, Mr. S. will be available to search for other employment. This may be extremely difficult, given the size of his community, but Alaska law generally considers unemployment to be a temporary circumstance that should not result in the reduction of an obligor parent's child support obligation.

Finally, Mr. S. stated he appealed the modification because he should not have to pay support for D., the parties' oldest child, because he does not live with Ms. L.-S. While it appears to be true that D. stays overnight with Mr. S.'s sister on occasion, the evidence is insufficient to establish that this is not a primary custody case. Thus, Mr. S. remains liable for D.'s support.

#### **IV. Conclusion**

Mr. S. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. Good cause does not exist to reduce Mr. S.'s modified child support from \$785 per month, which is effective as of May 1, 2009.

#### **V. Child Support Order**

- CSSD's November 3, 2009, Modified Administrative Child Support and Medical Support Order is affirmed;

- Mr. S. is liable for modified ongoing child support in the amount of \$785 per month, effective May 1, 2009;

DATED this 19th day of January, 2010.

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 5<sup>th</sup> day of February, 2010.

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

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