

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

IN THE MATTER OF:)	
)	OAH No. 09-0665-CSS
D. A. C.)	CSSD No. 001097549
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, D. A. C., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 9, 2009. The Obligee child is R., who is 10 years of age.

The hearing was held on January 4, 2010. Mr. C. appeared by telephone; the custodian, A.V.-M., did not participate.¹ Erinn Brian, Child Support Specialist, appeared for CSSD. The hearing was recorded; the record closed on January 4, 2010.

Based on the record as a whole and after careful consideration, Mr. C.'s child support is modified to \$855 per month, effective May 1, 2009. The obligor's claim of financial hardship is denied.

II. Facts

A. History

Mr. C.'s child support obligation for R. was set at \$212 per month in October 1999.² Ms. V.-M. initiated modification of the order on April 7, 2009.³ On April 24, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴ Neither party provided income information.⁵ On November 9, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. C.'s modified ongoing child support at \$800 per month, effective May 1, 2009.⁶ Mr. C. filed an appeal on December 4, 2009, asserting

¹ Telephone calls were placed to the custodian's two contact numbers before the hearing, but neither call was answered.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Pre-hearing brief at pg. 1.

⁶ Exh. 4.

the modified child support amount is too high because he has a child in the home and another on the way, and because of all the bills he has to pay, including a mortgage in the Philippines.⁷

B. Material Facts

The obligor, Mr. C., lives and works in Barrow, where he is employed by the North Slope Borough. According to his final year-to-date paystub, Mr. C.'s total income for 2009 was \$73,208.05.⁸

Mr. C. is married. His wife, M., is also employed by the Borough and earns between \$39,000 and \$40,000 annually.⁹ Mr. C. and M. are from the Philippines. In about 2005 they were married and purchased a house there. Mrs. C. lived in the home until 2006, at which time she moved to Alaska to join the obligor. Mrs. C.'s sister, M., lives in the Philippines house rent free. They do not charge her rent because she takes care of the house for them. M.' husband is currently working in Korea and sends her money for food and other necessities for her and her daughter. Mr. and Mrs. C. send M. about \$1,000 in American funds per month to cover the mortgage, which is roughly \$800-\$850, and utilities.

Mr. C. and M. have a five-year-old son in the home and are expecting another child to be born in about three months. Mrs. C. will be off work from March through June 2010 for the birth of their second child. The obligor did not know if she would be returning to work after that four months is up. Their five-year-old son had to have two surgeries in 2009 and, according to Mr. C., may require another one. Mr. C. carries insurance for his two children,¹⁰ but the cost of a trip to Anchorage for post-op treatment is roughly \$5,000 for airline tickets, hotel and car rental.

Mr. C. has regular monthly expenses of approximately \$4,180,¹¹ which includes \$1,200 for rent; \$700 for food; \$1,000 for the mortgage on the Philippines house; \$50 for natural gas; \$150 for electricity; \$312 for telephone, cable and Internet; \$240 for gasoline; and \$478 for the payments on four credit cards. Obligor did not list any expenses for personal care items. Mr. C. owns a 1999 Honda CR-V and a 1992 Chevrolet, both of which are paid for.

The obligee child, R., also lives in Barrow with her mother, A.V.-M. The custodian did not participate in the hearing, so little is known of her circumstances.

⁷ Exh. 5.

⁸ Obligor's Attachment 2 at pg. 6.

⁹ Exh. 8.

¹⁰ Obligor's Attachment 3 at pg. 1.

¹¹ Exh. 8 at pg. 1.

III. Discussion

A. *Mr. C.'s income*

A parent is obligated both by statute and at common law to support his or his children.¹² Civil Rule 90.3(a)(1) provides that an obligor parent's child support amount is to be calculated based on his or his "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹³ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified.

Mr. C.'s child support previously was set at \$212 per month in 2006. Pursuant to the petition for modification, CSSD calculated his modified child support at \$800 per month, based on his earnings from the first three quarters of 2009, extrapolated to \$60,944.04, which represents four quarters of income.¹⁴ This income figure, plus the 2009 Permanent Fund dividend, equals \$62,249.04 in total annual income.¹⁵

Prior to the hearing, Mr. C. submitted up-to-date financial information, which CSSD used to make a draft child support calculation for consideration. CSSD used Mr. C.'s year-to-date income of \$73,208.05, to calculate his modified child support amount at \$855 per month.¹⁶ At first blush it appears that this calculation does not accurately flow from Mr. C.'s actual income, which is much higher than the figure CSSD originally estimated, but the discrepancy can be explained by the fact that Mr. C. also has much higher mandatory deductions for federal taxes, FICA and retirement, than originally thought.¹⁷

Mr. C.'s child support obligation is now correctly calculated, and it is from this figure that his request for a variation based on financial hardship should be considered.

B. *Financial hardship*

Mr. C. testified that he cannot afford to pay child support in the amount set in the modification order and requested a variance pursuant to Civil Rule 90.3(c).

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

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ AS 25.27.190(e).

¹⁴ Exh. 4 at pg. 6.

¹⁵ *Id.*

¹⁶ Exh. 16.

¹⁷ *See* Exh. 4 at pg. 6.

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.”¹⁸ 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^[19]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child 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).²⁰

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. C. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied.

Mr. C. has a duty to support R., and this duty takes priority over other debts and obligations. R. is entitled to receive child support in an amount commensurate with Mr. C.’s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. C.’s wife is also employed full-time and although she will be off work for a few months this year for the birth of their second child, there is no evidence in the record that is sufficient to establish that she will not be returning to her full-time employment. Mr. and Mrs. C. may have to rethink their desire to own a home in the Philippines for which they are not receiving any rent payments.

IV. Conclusion

Mr. C. met his burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. However, he 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. His child support is now correctly calculated at \$855 per month, which should be adopted.

¹⁸ Civil Rule 90.3(c).

¹⁹ Civil Rule 90.3(c)(1).

²⁰ Civil Rule 90.3, Commentary VI.E.1.

V. Child Support Order

- Mr. C. is liable for modified ongoing child support in the amount of \$855 per month, effective May 1, 2009;
- All other provisions of CSSD's November 9, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 25th 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 12th 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.]