

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

IN THE MATTER OF:)	
)	OAH No. 09-0674-CSS
A. S. W.)	CSSD No. 001156810
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A. S. W., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on October 29, 2009. The obligee child, S., is 17 years old, but she was emancipated by court order effective November 10, 2009.

The formal hearing was held on January 7, 2010, and March 25, 2010. Mr. W. appeared by telephone during the first proceeding; he did not appear for the supplemental hearing. This is a foster care case, so the other party is the State of Alaska. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The evidentiary record closed on March 25, 2010.

Based on the record as a whole and after careful consideration, Mr. W.’s child support is set at \$1,667 for December 2008; and \$891 per month for January 2009 through November 2009. Mr. W. is not liable for child support as of December 1, 2009.

II. Facts

A. Procedural History

The obligee S. was placed into non-federal foster care on December 19, 2008.¹ On July 7, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. W.² He requested an administrative review and provided income information.³ On October 29, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. W.’s ongoing child support at \$537 per month, with arrears of \$10,530 for the period from

¹ Pre-hearing brief at pg. 1.
² Exh. 3.
³ Exh. 4.

December 2008 through October 2009.⁴ Mr. W. appealed on December 14, 2009, asserting that S. was out of state custody and he would like a hearing.⁵

The hearing was held on January 7, 2010, after which Mr. W. provided additional documents as requested by the undersigned. One of the documents, a separation agreement between him and his employer, was not complete – it consisted of only page 1 of a 3-page document.⁶ On February 10, a written notice was issued calendaring a supplemental hearing and directing Mr. W. to file the complete separation agreement, in addition to his 2009 tax return. On February 18, Mr. W. filed a request for more time and clarification of the February 10 order. On February 22, OAH staff called Mr. W. to inform him that: 1) his request for additional time had been granted; 2) the supplemental hearing had been rescheduled for March 25; and 3) a written order was being sent to him by email that same day.

Mr. W. did not submit any further evidence for his appeal. The supplemental hearing was held on March 25, but Mr. W. did not participate. His only telephone number had been disconnected sometime after the OAH's last telephone contact with him on February 22. At the supplemental hearing, CSSD was given until April 2 to file any additional evidence but the agency did not submit anything further.

B. Material Facts

Mr. W. is a construction electrician. In 2007, he was employed by Q. Mining, Ltd., out of No Name, Nevada. After his employment there ended, he removed the balance of his retirement and stock options and received a lump sum payout of \$163,921.36, apparently in early 2008.⁷

Mr. W. and his wife, O., moved to Alaska on February 15, 2008, where he was to work for C. Alaska, at the K. G. M. north of Juneau. C. Alaska paid for Mr. W.'s move to the state⁸ and also loaned him money for the down payment on a home in Juneau.

Mr. W. worked at the K. G. M. until January 28, 2009. Upon leaving, he entered into a separation agreement with C. Alaska in which the company forgave his relocation expenses and

⁴ Exh. 6.

⁵ Exh. 16.

⁶ See Mr. W.'s Rebuttal to post hearing brief, received on February 8, 2010.

⁷ Exh. 10.

⁸ See Exh. 9 at pg. 2.

home loan in the total amount of \$64,009.89.⁹ Their agreement states that “such debt forgiveness is considered as income and as such is subject to taxation.”¹⁰

Mr. W. and O. sold their home in Juneau and moved to Florida to be close to her family. They lost \$25,000 on the house in Alaska,¹¹ but after the sale they used the remaining cash balance of \$160,000 to purchase a home in Florida and to pay for \$20,000 in renovations. They own the house free and clear and do not have mortgage payments, so their monthly expenses are relatively low. Mr. W. is currently looking for work in Florida.

III. Discussion

A. *The Child Support Calculations*

A parent is obligated both by statute and at common law to support his or her children.¹² This obligation begins when the child is born.¹³ However, by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care services were initiated.¹⁴ S. began receiving nonfederal (state) foster care services on December 19, 2008, so that is the first month for which Mr. W. is liable for paying child support through CSSD.

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," minus mandatory deductions such as taxes and Social Security. As the person who filed the appeal in this case, Mr. W. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁵

Mr. W.'s 2008 income consists of a final payout from his Nevada employer in the amount of \$163,921.40, as reported to the Alaska Department of Labor and Workforce Development,¹⁶ and his earnings from C. Alaska totaling \$107,446.70, as shown on his 2008 W-2 from the company.¹⁷ The total of these two amounts is \$271,368.10. This figure, when inserted into CSSD's online child support calculator, results in a child support calculation of

⁹ Exh. 8.

¹⁰ *Id.*

¹¹ Mr. W. purchased the home for \$375,000 and sold it for \$350,000. *See* Mr. W.'s Rebuttal to post hearing brief, Exhs. 1-2.

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

¹³ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁴ 15 AAC 125.105(a)(1)-(2).

¹⁵ 15 AAC 05.030(h).

¹⁶ Exh. 10.

¹⁷ Mr. W. submitted these financial documents on January 15, 2010.

\$1,667 per month.¹⁸ Because S. was placed in nonfederal foster care in December 2008, Mr. W. is being charged only for one month of child support in that year.¹⁹

Mr. W.'s 2009 income is more problematic. He did not provide a copy of his 2009 tax return, primarily, as he claims, it had not yet been prepared when it was requested. Thus, without his tax return, the financial impact of Mr. W.'s real estate transactions on his 2009 tax obligation, specifically, whether he realized any capital gains, remains unresolved. Also, Mr. W. failed to provide pages 2 and 3 of his separation agreement with C. Alaska. As a result, it is not known whether he received any income from the company over and above the total amount of his loan forgiveness. C. Alaska reported that he earned \$28,426.69 during the first quarter of \$32,508.25 during the second quarter of 2009, for a total of \$60,934.94.²⁰ Neither of the individual amounts nor the total figure is not consistent with his loan forgiveness package, but at this juncture, these amounts are the best evidence of Mr. W.'s 2009 income. Inserting the total figure of \$60,934.94 into CSSD's online child support calculator results in a support amount of \$891 per month.²¹ Mr. W. is liable for this amount from January 2009 through November 2009. S. was emancipated by court order effective November 10, 2009, so Mr. W. is not liable for ongoing child support as of December 2009.

Mr. W. claims that his child support for December 2008 and November 2009 should be prorated because S. did not receive a full month's worth of services at either end of her placement. There is no provision in CSSD's statutes or regulations that allows the agency to prorate child support obligations, so Mr. W. is obligated for the total amount of support during each of these two months.

B. Unusual Circumstances

Mr. W.'s child support calculations are now correct. The obligor asserts that this case constitutes extraordinary circumstances because he is currently unemployed. Mr. W. testified that he cannot afford the child support amount and requested a variance due to financial hardship.

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

¹⁸ Exh. 11.

¹⁹ See Exh. 6 at pg. 9.

²⁰ Exh. 10.

²¹ Attachment A.

injustice would result if the support award were not varied."²² 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^[23]

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).²⁴

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. W. 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.

Alaska law generally considers unemployment to be a temporary circumstance that should not result in the reduction of an obligor parent's child support order.²⁵ Although Mr. W. is currently unemployed, he testified he looks for work quite often. Also, he is pursuing additional licensing in Florida that should help him find suitable employment. It should also be noted that Mr. W. does not have to pay ongoing support for S. because she has been emancipated by the court. Thus, he is obligated only for the arrears that accrued between December 2008 and November 2009. He may lack the current ability to pay his child support obligation, but Mr. W. should be able to start paying off the arrears once he starts working again.

IV. Conclusion

Mr. W. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His total income for 2008 and 2009 yield support calculations of \$1,667 per month and \$891 per month, respectively. These figures should be adopted. Mr. W. did not prove by clear and convincing evidence that manifest injustice would result in the absence of a variation in the calculated amounts.

²² Civil Rule 90.3(c).

²³ Civil Rule 90.3(c)(1).

²⁴ See Civil Rule 90.3, Commentary VI.E.1.

²⁵ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

V. Child Support Order

- Mr. W. is liable for child support for S. in the amount of \$1,667 for December 2008; and \$891 per month for the period from January 2009 through November 2009;
- Ongoing support is suspended as of December 2009 due to S.'s emancipation by the court;
- All other provisions of the October 29, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 16th day of April, 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 3rd day of May, 2010.

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

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