

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

IN THE MATTER OF: )

B. J. W. )

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) OAH No. 10-0010-CSS

) CSSD No. 001158179

**DECISION AND ORDER**

**I. Introduction**

The obligor, B. J. W., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 1, 2009. The Obligee child is C., who is sixteen years old.

The hearing was held on February 17, 2010. Both Mr. W. and the custodian of record, C.R. H., participated. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 17, 2010.

Based on the record as a whole and after careful consideration, CSSD's December 1, 2009, Amended Administrative Child Support and Medical Support Order is affirmed. Mr. W.'s request for a hardship variance is denied.

**II. Facts**

*A. Procedural history*

Ms. H. applied for child support services on C.'s behalf in Oregon on October 2, 2008.<sup>1</sup> That state submitted an interstate petition for child support to CSSD on April 10, 2009.<sup>2</sup> CSSD notified Mr. W. of the obligation and subsequently established his paternity of the child by genetic testing showing a 99.99% probability of paternity.<sup>3</sup> Mr. W. provided income information<sup>4</sup> and on September 23, 2009, CSSD served an Administrative Child Support and Medical Support Order on him.<sup>5</sup> He requested an administrative review.<sup>6</sup> Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 1, 2009, that set Mr. W.'s ongoing child support at \$775 per month

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1 Exh. 13.

2 Exh. 1.

3 Exhs. 2-5.

4 Exh. 6.

5 Exh. 7.

as of January 2010 (minus a deduction for health insurance premiums), with arrears of \$14,340 for the period from October 2008 through December 2009.<sup>7</sup>

On December 30, 2009, Mr. W. filed an appeal and requested a formal hearing. His appeal asserts that: 1) Ms. H. previously released full custody of C. to Mr. W. but then later came to Alaska and “stole” C. from him; 2) Ms. H. owes Mr. W. \$13,157 from their past dealings and he has already paid her “above and beyond any child support owed to her;” and 3) an incorrect amount was deducted from the child support amount for health insurance that Mr. W. provides for C.<sup>8</sup>

*B. Material facts*

Mr. W. has worked for No Name Company on the North Slope for many years.<sup>9</sup> During the three-year period from 2007 through 2009, Mr. W. earned an average of \$84,735.38 per year.<sup>10</sup> Mr. W. is married to D. Her three children from a prior relationship, aged 17, 13 and 7 years, live with them in the home. D. does not work, nor does she receive child support for her children. Mr. W. testified that all three children have been diagnosed with ADD (Attention Deficit Disorder) or ADHD (Attention Deficit Hyperactivity Disorder), and that they require constant supervision.

Mr. W. testified that his regular monthly expenses include \$1,420 for the mortgage payment; \$600-\$700 for food; \$200-\$300 for electricity; \$238 for natural gas, on average; \$230 for telephone, cable and internet services; \$320 for gasoline; \$150 for vehicle insurance; \$137 for one round-trip flight to and from Anchorage to report for work; \$50-\$60 for vehicle maintenance; and \$300 for non-food and hygiene (personal care) items. Mr. W. does not have any credit card debt; he paid it off after selling a parcel of land in 2009. He also reported that he has medical bills of about \$5,000 that he plans to pay when he gets his tax return. The family has two vehicles, both of which are paid off – a 1996 GMC Yukon and a 1986 Chevrolet truck that is driven only during the summer.

Ms. H. reports that her household expenses include \$995 for rent; \$400 for food; \$150 for electricity; \$25 for water service; \$200-\$205 for telephone and cell phone; \$120 for cable and

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<sup>6</sup> Exh. 8.  
<sup>7</sup> Exh. 11.  
<sup>8</sup> Exh. 12.  
<sup>9</sup> Exh. 14.

internet; \$355 for the payment on a 2003 Monte Carlo; \$130 for gasoline; \$50 for maintenance; \$125 for automobile insurance; \$25 for renter's insurance; and \$100 for health insurance for herself. Ms. H. also testified she has unpaid medical bills of about \$15,000 that remain from two surgeries. She has no credit card debt.

The parties have had a lengthy and complicated personal relationship and each has written the salient facts in a statement for the appeal. The summary of facts set forth here is taken from the parties' letters. Mr. W. and Ms. H. began living together in Alaska in 1990, and apparently separated in 2004 when Ms. H. moved to Oregon. For the next few years, C. and his sister J. lived for lengthy blocks of time with both Mr. W. in Alaska and Ms. H. in Oregon. In September 2007, C. and J. traveled to Alaska to stay with Mr. W. for awhile, but J. did not remain in his home for more than a few days and went to live elsewhere. Ms. H. blames Mr. W.'s wife, but the reasons J. left are irrelevant to the issues in this appeal.

C. stayed with Mr. W. even after J. left. In April 2008, Ms. H. traveled to Alaska to visit the children and apparently at C.'s request, took him back to Oregon without Mr. W.'s advance knowledge. As of the date of the hearing, C. was still living with his mother in Oregon.

### **III. Discussion**

Mr. W. is contesting his obligation to pay support for C. The obligor did not challenge CSSD's calculations, but rather, claims he should not be liable for C.'s support because Ms. H. owes him money from the past. Also, Mr. W. claims that having to pay support in the amount CSSD calculated would create an extreme financial hardship for him.

For its part, CSSD requested that its Amended Administrative Child Support and Medical Support Order be affirmed. Thus, the actual child support calculations are not at issue in this appeal, but rather whether the amounts calculated should be adjusted based on one or both of Mr. W.'s legal arguments. As the person who filed the appeal in this case, Mr. W. has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>11</sup>

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<sup>10</sup> *Id.* Total wages of \$254,206.10 ÷ 3 = \$84,735.38.

<sup>11</sup> 15 AAC 05.030(h).

A. *Mr. W. is liable for support*

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> This obligation begins when the child is born.<sup>13</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.<sup>14</sup>

In challenging his obligation to pay child support for C., Mr. W. claims that it is Ms. H. who owes him money in repayment for everything he purchased for her and the children – C. and the custodian’s two daughters from a prior relationship, K. and J. – during the course of and even after their relationship. The obligor claims he paid for everything for 14 ½ years, including housing, food, doctor bills and school clothes. Even so, he is obligated to support C. throughout the child’s minority. Mr. W. admits that he had not given Ms. H. any child support for C. after April 2008 when she took their son back to Oregon. Ms. H. may have tried to obtain some financial help from Mr. W. after April 2008 but was unsuccessful. She thereafter decided to go through official channels and submitted an application for child support services on October 2, 2008,<sup>15</sup> so that is the first month Mr. W. is liable to pay support through CSED. The expenditures he made on C.’s behalf prior to April 2008 cannot be deducted from his *present* obligation to support the child that arose when Ms. H. applied for child support services in October 2008.

B. *Good cause variance*

Mr. W.’s second argument is that he cannot afford to pay the child support amount CSSD calculated and he requested a variance due to financial hardship. CSSD contested his request, asserting there is no good cause to reduce the obligor’s child support amount.

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

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

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

<sup>14</sup> 15 AAC 125.105(a)(1)-(2).

<sup>15</sup> Exh. 13 at pg. 2.

injustice would result if the support award were not varied."<sup>16</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>[17]</sup>

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).<sup>18</sup>

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. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for C.

Mr. W. maintains that he is incapable of paying the child support amount because his income is not sufficient to meet all of his financial obligations. His stated bills seem to be on average. However, Mr. W.'s wife, D. is not working and there is insufficient evidence in the record to establish that she cannot work, at least part-time, to contribute financially to the household. Mr. W. obviously feels a moral obligation to support his stepchildren, but he should not have to support the household by himself, especially at C.'s expense. Mr. W. has a duty to support C., and this duty takes priority over other debts and obligations. C. is entitled to receive child support in an amount commensurate with Mr. W.'s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. W.'s financial situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated under the rule for C. should be lowered.

One final item should be discussed. Mr. W. indicated the deduction for health insurance coverage was incorrect. Mr. W. is entitled to a credit of up to 50% of the premiums he pays for C.<sup>19</sup> His caseworker at CSSD can make the necessary adjustments in his child support amount.

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<sup>16</sup> Civil Rule 90.3(c).

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

<sup>18</sup> See Civil Rule 90.3, Commentary VI.E.1.

**IV. Conclusion**

Mr. W. did not meet his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. He is liable for supporting C. through CSSD as of October 2008. Neither did Mr. W. meet his burden of proving by clear and convincing evidence that there is good cause to lower his child support amount. CSSD’s Amended Administrative Child Support and Medical Support Order should be affirmed.

**V. Child Support Order**

- CSSD’s December 1, 2009, Amended Administrative Child Support and Medical Support Order is affirmed.

DATED this 9<sup>th</sup> day of March, 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 20<sup>th</sup> day of March, 2010.

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

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

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<sup>19</sup> Civil Rule 90.3(d).