

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

IN THE MATTER OF:)

D. K. C.)

OAH No. 10-0012-CSS

CSSD No. 001157661

DECISION AND ORDER

I. Introduction

The obligor, D. K. C., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 8, 2009. The Obligee child is D. M., who is sixteen years old.

The hearing was held on January 27, 2010 and February 16, 2010. Mr. C. appeared in person; the custodian of record, T. J. H., participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 23, 2010.

Based on the record as a whole and after careful consideration, Mr. C. is liable for child support for D. from December 2008 through December 2009 and from March 2010 forward, as discussed below. Mr. C. is credited with three direct payments, made to both Ms. E. and Ms. H. Mr. C. is not liable for support for January and February 2010, as D. was living with him at the time. Mr. C.'s arrears from December 2008 through December 2009 are reduced to \$500 per month based on the good cause provisions of Civil Rule 90.3(c), and ongoing support is set at \$816 per month, as calculated by CSSD.

II. Facts

A. Procedural History

Ms. H. began receiving a public assistance cash grant on D.'s behalf in December 2008.¹ CSSD served Mr. C. with a Notice of Paternity and Financial Responsibility on March 20, 2009,² then proceeded to establish Mr. C.'s paternity of D.³ On August 18, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. C.⁴ He requested an

¹ Exh. 12 at pg. 1.

² Exh. 1.

³ Exhs. 2-4.

⁴ Exh. 5.

administrative review and submitted income information and evidence regarding D.'s residence.⁵ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 8, 2009, that set Mr. C.'s ongoing child support at \$816 per month, with arrears of \$10,108 for the period from December 2008 through December 2009.⁶

On December 28, 2009, Mr. C. filed an appeal and requested a formal hearing. He asserted that 1) D. did not reside with Ms. H. during the 2008-2009 school year or from October 2009 through December 2009; 2) he had already paid support for October 2009 through December 2009; and 3) he has another minor child in the home who should be taken into consideration.⁷

B. Material Facts

1. Mr. C.'s Evidence

The dates for which CSSD has charged Mr. C. with support are from December 2008 through December 2009. During these appeal proceedings Mr. C. had custody of D. during January and February 2010, so he is not liable for supporting D. for those months. After the record closed, both Mr. C. and Ms. H. supplemented the record with statements indicating that D. was no longer living in Mr. C.'s home as of about February 20, 2010.⁸ As a result, Mr. C.'s support obligation will start again as of the month of March 2010.

Mr. C. challenges the period of time he should be liable for support. He asserts that D. has not lived with Ms. H. during the entire time period at issue, that in fact D. lived with B. M., the man believed to be D.'s father until recently. Mr. C. maintains that D. lived with B. M. and his wife R. during D.'s entire freshman year in high school (the 2008-2009 school year). Mr. C. testified that D. told him about living with the M.s and that R. M. confirmed it telephonically.

⁵ Exhs. 6-8.

⁶ Exh. 9.

⁷ Exh. 10. Mr. C. also raised the issue of a private contract with Ms. H., but he was informed at the hearing that such an agreement is not enforceable unless signed off by the court. *See* AS 25.27.062(m)(2)(A)(i).

⁸ Normally this type of information would result in another hearing or status conference being held, but since both parties submitted essentially the same information, their statements are sufficient to supplement the record without the need for an additional hearing.

In addition to D.'s freshman year, Mr. C. is challenging his support obligation for the months of October 2009 through December 2009, a three-month period during which he claims that D. lived with Mr. M.'s relatives named E., not with Ms. H..

In support of his appeal, Mr. C. submitted a letter from R. E. that states D. lived with their family during October, November and December 2009.⁹ Ms. E.'s letter also states that she received two checks in the amount of \$501 each [from Mr. C.] and that she gave the money to Ms. H.¹⁰ Finally, although he testified he had been speaking with the M.s, Mr. C. acknowledged that they did not provide him with a letter that confirms D. lived with them during his freshman year.

2. Ms. H.'s Evidence

Ms. H. responded initially to the obligor's claim by asserting that D. was with her until December 2009, when she moved to Las Vegas. Ms. H. later clarified her testimony to say that while she was preparing to move out of state, that she allowed D. to live with his "auntie" – Ms. E., apparently – for a couple of months.

As to how D. came to be with Mr. C. as of January 2010, Ms. H. explained that circumstances were difficult before her move because she was going through a divorce and her mother had died. Ms. H. testified that she and D. had an argument just before she left, so she allowed him to stay in Alaska through the Christmas holidays, ostensibly to be with friends. Instead, Ms. H. said that D. moved in with Mr. C., which she asserts must have been their plan all along. Ms. H. did not submit any exhibits to supplement the record.

3. Findings

Based on the evidence as a whole, Mr. C. did not meet his burden of proving D. lived with Mr. M. during the child's freshman year in high school. Although it is possible D. did, there is no documentary evidence such as school records or a letter from B. M. to support Mr. C.'s claim, and Ms. H. testified D. was with her until he went to stay with his "auntie" in late 2009. Without additional evidence, Mr. C. has not met his burden of proof.

As to the time period from October 2009 through December 2009, it is more likely than not that D. lived primarily with the E.s. This is established primarily through Ms. E.'s letter and

⁹ Exh. A at pg. 17.

¹⁰ *Id.*

Mr. C.'s child support payments to her. However, even though D. lived with another family, Mr. C. is liable for support during those three months. The child support arrears are owed to Ms. H. for this period of time and D. stayed with the E.s with her consent. As the custodial parent, Ms. H. was within her right to make or assent to, other living arrangements for D. Of course, Mr. C. will be credited with the three direct payments he made on D.'s behalf for October through December 2009.

Finally, there is no dispute that Mr. C. paid support on D.'s behalf for October through December 2009 in the amount of \$501 per month and he should be credited with those payments.¹¹

III. Discussion

A. *Mr. C. is Liable for Child Support*

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 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.¹⁴ The record indicates that public assistance benefits began to be paid on D.'s behalf in December 2008,¹⁵ so that is the first month for which CSSD may charge Mr. C. with child support.

As the person who filed the appeal in this case, Mr. C. has the burden of proving by a preponderance of the evidence that the child support amount established in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁶ He is challenging having to pay support for D. while his son was a freshman in high school, for the period from December 2008 through about May 2009, then from October 2009 through December 2009. Based on the evidence as a whole, Mr. C. did not meet his burden of proof and he shall remain liable for D.'s support for this time period.

¹¹ Exh. A at pgs. 7-14.

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 Exh. 7 at pg. 9.

¹⁶ 15 AAC 05.030(h).

Mr. C.'s contention that D. lived with the B. M. family is plausible because D. lived with the E. family at the end of 2009 and it is conceivable that D. lived with the M.s. However, Mr. C. provided a statement from R. E., but the only evidence Mr. C. provided regarding D.'s freshman year was testimony that conflicted with Ms. H.'s testimony. Without more, Mr. C.'s evidence is simply not sufficient to meet his burden of proof on this issue.

B. Good cause variance

The second issue in this case concerns whether Mr. C.'s child support obligation should be adjusted. 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." Civil Rule 90.3(c). A finding that "unusual circumstances" exist 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 . . .
[17]

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. Vachon v. Pugliese, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.^[18]

¹⁷ Civil Rule 90.3(c)(1).

¹⁸ Civil Rule 90.3, Commentary VI.E.1.

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. C. proved by clear and convincing evidence that manifest injustice would result if he were required to pay the full arrears in this case. In applying the above language to Mr. C.'s arrears, a primary factor to be taken into consideration is that Mr. C. did not know he was D.'s father until he was served with the paternity complaint on March 20, 2009.¹⁹ D. was already nearly sixteen years by then. The obligor was not aware of his support obligation before that time, so he was not able to plan for supporting D. any earlier. Mr. C. has made significant financial obligations to his wife and his other son living in the home,²⁰ and he has had to sell assets in order to meet this obligation, so he should have some relief from the entire arrears. Setting Mr. C.'s child support at \$500 per month constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). However, now that he has made the financial changes required by this obligation, the ongoing child support amount of \$816 per month, effective as of March 1, 2010, should remain in place.

IV. Conclusion

Mr. C. met his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. Mr. C. is liable for supporting D. as of December 2008, when public assistance benefits began to be paid. His arrears for that time period should be \$500 per month through December 2009, based on the good cause provisions of Civil Rule 90.3(c).

Mr. C. is not liable for support for January and February 2010 because D. lived with him during those two months. Ongoing child support as of March 1, 2010, should be \$816 per month.

Mr. C. should receive a credit of \$501 per month for three direct payments made for the months of October through December 2009 in the total amount of \$1,503.

V. Child Support Order

- Mr. C. is liable for support arrears in the amount of \$500 per month for December 2008 through December 2009;
- Mr. C. is entitled to a credit of \$501 per month for three direct payments made for the months of October through December 2009 in the total amount of \$1,503;

¹⁹ See Exh. 1 at pg. 11.

²⁰ See Mr. C.'s list of expenses received on February 22, 2010.

- Mr. C. is not liable for support for January and February 2010;
- Mr. C. is liable for ongoing child support of \$816 per month, effective March 1, 2010;
- All other provisions of CSSD's December 8, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 15th 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 5th day of April, 2010.

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

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