

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

IN THE MATTER OF:)

J. A. C.)

) OAH No. 10-0015-CSS
) CSSD No. 001049247
)

DECISION AND ORDER

I. Introduction

The Obligor, J. A. C., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on December 17, 2009. The Obligee child is B., who is currently fifteen years of age.

The hearing was held on January 27, 2010. Both Mr. C. and the custodian, M. A. T.,¹ participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on February 10, 2010.

Based on the record and after due deliberation, Mr. C.’ child support is modified to \$283 per month, effective March 1, 2009.

II. Facts

A. Background

Mr. C.’ child support obligation for B. was set at \$50 per month in January 2007.² CSSD initiated a modification review on February 1, 2009 by sending the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. C. provided financial information.⁴ On December 17, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C.’ ongoing child support to \$270 per month, effective March

¹ C. had previously been living with her maternal grandmother, P. M., but has since joined Ms. T. in her home and at the time of the hearing was scheduled to begin high school as soon as all of her paperwork had been completed.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

1, 2009.⁵ Mr. C. appealed on January 7, 2010, asserting primarily that he cannot afford the child support amount because he has two children in the home and he is having financial difficulties.⁶

B. Material Facts

Mr. C. was formerly employed at a car dealership, where he was a detailer. He testified his coworkers verbally harassed him on a racial basis so one day it got bad enough that he left work and went home for the rest of the day. Even though he had told his supervisor why he was leaving, she later telephoned him and told him he was fired. At the time of the hearing Mr. C. had already been to Job Service and put his resume on their computer system in an effort to find other employment. He said he preferred to work as a car detailer but that he would accept just about any job.

Mr. C. earned \$17,805.88 from his employment in 2009.⁷ In addition to his earnings, Mr. C. is a member of a Native corporation and in 2009 received \$12 per share for his 100 shares, all of which totals \$1,200.⁸ With the addition of the 2009 PFD, Mr. C.' total income for the year was \$20,310.88.⁹ This income figure results in a child support amount of \$283 per month.¹⁰

Mr. C. has two children living in the home with him, but both are younger than B. It is not known whether he lives with their other parent. Mr. C.' regular monthly financial obligations include \$461 for the mortgage; \$253 for condo fees; \$150-\$200 for electricity and natural gas; \$30 for telephone service; \$106 for car insurance; \$100 for gasoline; and \$150-\$200 for "personal use for my children."¹¹ Mr. C. did not list an expense item for food because they receive food stamps on a monthly basis. Mr. C. testified he has already been cutting his expenses, for example, he terminated his cable TV service recently.

Ms. T. is employed as a house cleaner and she also has 158 shares of Native corporation stock that paid \$12 per share in 2009. She has one child in the home younger than B. Ms. T.

⁵ Exh. 4.
⁶ Exh. 5.
⁷ Exh. 8.
⁸ Exh. 9 at pg. 1.
⁹ Exh. 8.
¹⁰ *Id.*
¹¹ Exh. 5.

testified that she and her boyfriend, who works seasonally in construction, are able to earn enough to support their household, but they also receive \$500 per month in food stamps.

III. Discussion

A. Mr. C.' income

A parent is obligated both by statute and at common law to support his or her children.¹² 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."¹³ 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 obligation. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁴

Mr. C.' child support was set at \$50 per month for one child in 2007. In connection with the modification review, CSSD calculated Mr. C.' modified child support at \$270 per month. After the hearing CSSD revised the child support figure to \$283 per month based on Mr. C.' testimony that he receives Native corporation dividends. The revised calculation appears to be correct and it meets the necessary 15% difference that supports modification of a child support order.

B. Financial hardship

Mr. C.' 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

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

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 125.321(d). In this case, the notice was issued on February 1, 2009. Exh. 2.

varied."¹⁵ 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^[16]

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).¹⁷

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. is currently unemployed, but there is insufficient evidence in the record to prove that his unemployment is anything other than a temporary circumstance that will improve when he finds another job. The obligor may lack the ability to pay the total child support amount every month while he is unemployed, but there is no evidence that Mr. C. is permanently unemployed. He will no doubt incur some arrears while he is unemployed, but Mr. C. should be able to start paying those off once he starts working again. 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.¹⁸

IV. Conclusion

Mr. C. 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. Mr. C.' child support is now correctly calculated at \$283 per month, and that amount should be adopted.

V. Child Support Order

- Mr. C. is liable for modified ongoing child support in the amount of \$283 per month, effective March 1, 2009;

¹⁵ Civil Rule 90.3(c).

¹⁶ Civil Rule 90.3(c)(1).

¹⁷ See Civil Rule 90.3, Commentary VI.E.1.

¹⁸ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

- All other provisions of CSSD's December 17, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 2nd 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 19th 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.]