

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

IN THE MATTER OF: )

I. B. B. )

) OAH No. 10-0017-CSS  
) CSSD Nos.: 001068874 &  
) 001068440

**DECISION AND ORDER**

**I. Introduction**

The obligor, I. B. B., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on December 2, 2009. The Obligees children are L. and D., who are 17 and 16 years of age, respectively.

The hearing was held on January 28, 2010. Ms. B. appeared by telephone. In this foster care case, the custodian is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 26, 2010.

Based on the record as a whole and after careful consideration, Ms. B. is liable for supporting as of August 2006 because they began receiving federal or nonfederal foster care services at that time. However, Ms. B.'s child support amount has been adjusted pursuant to the good cause provisions of Civil Rule 90.3(c).

**II. Facts**

*A. History*

L. and D. began receiving federal or state (nonfederal) foster care services on July 21, 2006.<sup>1</sup> On August 18, 2009, CSSD served an Administrative Child Support and Medical Support Order on Ms. B.<sup>2</sup> She requested an administrative review, provided income information and asked CSSD to reduce her withholding amount due to hardship.<sup>3</sup> Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 2, 2009, that set Ms. B.'s ongoing child support at \$237 per month, effective January 1, 2010, with arrears of \$3,857 for the period from August 2006 through December 2009.<sup>4</sup> Ms. B. signed her appeal on December 16, 2009 and requested a formal

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<sup>1</sup> Post-hearing Brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exhs. 2-4.

<sup>4</sup> Exh. 5.

hearing. She asserted that she had an upcoming court date regarding guardianship of the children and that she would be asking the judge to adjust her child support because the children have been in her custody since April 2008.<sup>5</sup>

*B. Material Facts*

The state of Alaska took custody of Ms. B.’s children, L. and D., on July 21, 2006,<sup>6</sup> most likely because Ms. B. was previously incarcerated. The boys went to Illinois to live with L.’s father, S. W., so foster care services for L. stopped in December 2006.<sup>7</sup> Mr. W. continued to receive foster care reimbursement for D., who was named guardian by the court on March 20, 2008.<sup>8</sup> He has remained D.’s guardian up to the present time.

After being released from jail, Ms. B. visited the boys at Mr. W.’s home in March 2008. She decided to stay in Illinois and, as she testified, picked herself up by the bootstraps. Ms. B. went to work for P. M. in April 2008 as a Sales Manager and has become a valued employee. The company’s vice president and several coworkers wrote letters supporting Ms. B. and complimenting her parenting of L. and D. The employees stated the boys have been in Ms. B.’s custody since she started to work there and that they have also spent a significant amount of time at the company doing odd jobs and yard work in the summer.<sup>9</sup> After the hearing, L. also wrote a letter stating circumstances were difficult at his father’s house – he and D. were locked out on “multiple occasions – so L. and his brother moved in with Ms. B. in April 2008.<sup>10</sup>

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> This obligation begins when the child is born.<sup>12</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

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<sup>5</sup> Exh. 6.

<sup>6</sup> Post-hearing brief at pg. 1.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. 8.

<sup>9</sup> Exh. 2 at pgs. 1-11.

<sup>10</sup> L. W.’s letter was received with other documents from Ms. B. on February 16, 2010, and they have been marked by the OAH as Exh. 9.

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

notice of his or her support obligation.<sup>13</sup> L. and D. began receiving foster care at the end of July 2006, so August 2006 is the first month for which CSSD may charge Ms. B. with child support. Foster care services for L. were terminated in December 2006 because he went to live with his father, S.W. Mr. W.'s subsidized guardianship of D. continues up to the present time.

Ms. B. has not challenged CSSD's child support calculations. Rather, she asserts that she cannot afford to pay the arrears while at the same time supporting two teenagers in the home. CSSD correctly calculated Ms. B.'s support obligation at \$50 per month from August 2006 through April 2008, based on her actual income.<sup>14</sup> The agency then adjusted that figure to \$25 per month from May 2008 through December 2008, based on the state custody provisions of Civil Rule 90.3(i).<sup>15</sup> As of January 2009, CSSD calculated Ms. B.'s child support at \$237 per month, also based on state custody.<sup>16</sup> It is CSSD's position that the agency is obligated to charge Ms. B. with support unless and until the court withdraws or modifies the guardianship order.

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

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<sup>13</sup> 15 AAC 125.105(a)(1)-(2).

<sup>14</sup> Exh. 5 at pg. 8.

<sup>15</sup> Exh. 5 at pg. 10.

<sup>16</sup> Exh. 5 at pg. 11.

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

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.<sup>[18]</sup>

In applying the above language to Ms. B.'s arrears, the primary factor that must be taken into consideration is that both children have been living with the obligor since April 2008. Unfortunately, all this time Ms. B. has been subject to a court order naming Mr. W. as D.'s guardian, an order that she has recently challenged in court. As a result of the state continuing to pay a foster care subsidy to Mr. W., the child support Ms. B. has to pay on this case would deprive L. and D. of the very support they need from their mother while living in her household. This essentially makes L. and D. bear the burden of Ms. B.'s child support arrears. This has increased the financial burden on the family and adds to the impact on L. and D.

The Alaska Supreme Court holds that factors such as these, which relate to the well being of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term "good cause," however, is to "be determined by the context in which it is used."<sup>19</sup> That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, commentary at sec. I(B).<sup>[20]</sup>

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. B. proved by clear and convincing evidence that manifest injustice would result if she were required to pay the full arrears in this case. It makes little sense and it would be unjust to burden Ms. B.'s household by adding more child support debt to her current obligation to support L. and D. in her home. Since she is still subject to the guardianship order for D., Ms. B.'s 2008 child support amount of \$25 per month should continue on into 2009.

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

19 Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

20 *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

This constitutes a reasonable measure of her ability to pay support under Civil Rule 90.3(c). This should reduce her total arrears significantly.<sup>21</sup>

**IV. Conclusion**

Ms. B. met her burden of proving that the Amended Administrative Child Support and Medical Support Order is incorrect. Ms. B. proved by clear and convincing evidence that there is good cause in this case to reduce her child support arrears to \$25 per month beginning in January 2009, and ongoing.

**V. Child Support Order**

- Ms. B. is liable for support arrears in the amount of \$50 per month for the period from August 2006 through April 2008;<sup>22</sup> and \$25 per month from May 2008 through March 2010, and ongoing;
- All other provisions of CSSD's December 2, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 18th day of March, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>21</sup> 15 AAC 125.545(a).

<sup>22</sup> It appears CSSD suspended collection of the arrears from December 2006 through June 2007. *See* Exh. 5 at pg. 12. It was not discussed at the hearing, but if CSSD's treatment of this time period is no longer correct, the agency should collect support for those months.

**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.]