

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

IN THE MATTER OF:)

E. R.)

OAH No. 10-0025-CSS

CSSD No. 001140547/001140548

DECISION AND ORDER

I. Introduction

The Obligor, E. R., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on September 23, 2009. The hearing was held on February 11, 2010. Ms. R. did not appear.¹ The other party in this foster care case is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on February 11, 2010.

Based on the record and after careful consideration, Ms. R.’s child support is modified to \$50 per month for twelve children, effective March 1, 2009, based on the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Background

Ms. R.’s child support obligation was set at \$67 per month for eleven children in September 2006.² On February 9, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order so as to add the child M. to Ms. R.’s order.³ She provided income information.⁴ On November 30, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. R.’s ongoing child support to \$510 per month, effective March 1, 2009, and also added \$92 in arrears for M. for the period from January 2009 through February 2009.⁵ Ms. R. appealed on January 13, 2010, asserting primarily that the child

¹ CSSD’s contact information for Ms. R. contained three telephone numbers, all of which were called before the hearing was scheduled to begin. The first two numbers are no longer in service and the call to the third number went unanswered. A message was left for Ms. R. to call the Office of Administrative Hearings.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

support amount is too high and she still has three children in the home to provide for in addition to all of her bills.⁶

On January 25, 2010, the Office of Administrative Hearings (“OAH”) sent Ms. R. notice of the date and time for the hearing by certified mail. As of the date of the hearing, the “green card” indicating the notice had been served on her had not been returned. Ms. R. did not appear, nor could she be reached by telephone. Because notice of the hearing had been sent to Ms. R. by certified mail to her address of record, service of the notice of hearing was found to be effective and the hearing was conducted without her participation.⁷

During the hearing, CSSD’s representative Andrew Rawls stated that Ms. R. had visited the agency’s offices in person a few days earlier and that he had spoken with her. Mr. Rawls reported that based on their conversation, CSSD had changed its position and was recommending that Ms. R.’s child support be set at \$50 per month for all the children in this case. He went on to say that CSSD had obtained Ms. R.’s up-to-date income information, from which the agency estimated her total 2009 income at \$9,554.89, which, for a family of four, is well below the poverty level. However, because of the number of children in this case, a child support amount calculated from that income level is \$399 per month for the ten children in foster care as of March 2009, and \$359 per month as of August 2009, when one more child returned to the home. Given Ms. R.’s income, CSSD indicated it is highly unlikely she would be able to pay child support at that level. CSSD instead recommended that Ms. R.’s child support be set at \$50 per month for all the children in this case, with the appropriate adjustments for the number of children in her home.

B. Findings

1. Notice of the date and time for the continued hearing was sent by certified mail to Ms. R.’s last-known address, but she did not appear for the hearing, nor could she be contacted by telephone;

2. Ms. R. has twelve children: as of March 2009, ten of her children were in foster care and two children (L. and T.) lived in the home with her; as of August 2009, another child (N.) returned to the home so there were nine children in foster care;⁸

⁶ Exh. 5.

⁷ See 15 AAC 05.010(c).

⁸ Exh. 4 at pg. 6.

3. At the hearing, CSSD indicated Ms. R.'s 2009 income from earnings was actually about \$9,554.89, which yields child support amounts of \$399 per month for ten children in foster care and \$359 per month for nine children in foster care;

4. Based on her income from earnings plus the PFD, Ms. R.'s gross income for 2009 was \$10,859.89.⁹ Subtracting mandatory taxes and FICA deductions, her adjusted annual income is \$9,577.45, which equals just \$798.12 per month in take-home pay;¹⁰

5. Manifest injustice to the children living in her home would result if Ms. R.'s child support amount calculated under Civil Rule 90.3 were not varied to the statutory minimum figure of \$50 per month. CSSD is in agreement with this amount.

III. Discussion

Ms. R. filed an appeal of a child support order and the notice of the date and time set for the hearing was sent to her last known address. However, she failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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."¹² A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹³

CSSD modified Ms. R.'s child support to \$510 per month, effective March 2009.¹⁴ This figure reflects ten children in foster care and two in the home, and is based on income of \$12,370.23, which Ms. R. reported on her 2008 tax return. CSSD further modified Ms. R.'s child support to \$459 per month as of August 2009, based on the same income but which reflects nine children in foster care and three in the home.¹⁵

⁹ Exh. 8 at pg. 2.

¹⁰ $\$9,577.45 \div 12 = \798.12 .

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

¹² AS 25.27.190(e).

¹³ 15 AAC 125.321(d). In this case, the notice was issued on February 9, 2009. Exh. 2.

¹⁴ Exh. 4 at pg. 7.

¹⁵ Exh. 4 at pg. 8.

After getting up-to-date information about Ms. R.'s actual 2009 income and speaking with her directly, CSSD changed its position and recommended that her child support be set at \$50 per month for all twelve children.¹⁶ The agency indicated Ms. R.'s income level is below the federal poverty level for a family of four and suggested it is highly unlikely she would be able to pay the child support calculated under Civil Rule 90.3 and still be able to support her other children in the home.

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."¹⁷ 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^[18]

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).¹⁹

The Alaska Supreme Court holds that factors 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."²⁰ That context, for Civil Rule 90.3 purposes, must focus first and foremost on the

¹⁶ The specific amount of support for any given month depends on the number of children in foster care. For example, as of March 2009, Ms. R. had ten children in foster care and two in the home, so her actual support obligation effective that month is \$41.67, based on the provisions of Civil Rule 90.3(i) for third party custody. Another child returned home as of August 2009, so Ms. R.'s actual support obligation is \$37.50 as of that month and ongoing.

¹⁷ Civil Rule 90.3(c).

¹⁸ Civil Rule 90.3(c)(1).

¹⁹ See Civil Rule 90.3, Commentary VI.E.1.

²⁰ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

needs of the children. See Civil Rule 90.3, commentary at sec. I(B).^[21]

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. R.'s appeal proved by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. This conclusion is based primarily on the fact that Ms. R. has twelve children to support, nine of whom are currently in foster care and three of whom are living in the home with her. Given Ms. R.'s very low income, her monthly net income is \$9,577.45, which equals just \$798.12 per month. Having to pay support in excess of the statutory minimum would constitute manifest injustice for the three children in her home and would seriously jeopardize her ability to provide for them the necessities of life such as housing and food. Accordingly, CSSD's recommendation that Ms. R.'s child support be set at \$50 per month is justified in this case.

One final issue must be addressed. This is an "add-a-kid" modification in which the obligor's youngest child, M., was added to the child support order for her other 11 children. CSSD calculated Ms. R.'s arrears for M. only at \$46 per month for January and February 2009.²² CSSD indicated this amount was calculated based on the agency's determination of Ms. R.'s actual income for the year.²³ However, now that Ms. R.'s modified child support has been set at the statutory minimum amount of \$50 per month, her arrears for M. should also be adjusted. The most reasonable method is simply to add the next consecutive step increase from 11 children to 12 children, based on Ms. R.'s prior child support order. Her child support was \$67 per month for 11 children, so the next higher amount for 12 children would be \$70 per month, an increase of \$3 per month.²⁴

IV. Conclusion

Ms. R. met her burden of proving by clear and convincing evidence that manifest injustice would result if her modified child support amount calculated under Civil Rule 90.3 were not varied. There is good cause to reduce Ms. R.'s modified child support to \$50 per month for

²¹ *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

²² *See* Exh. 4 at pg. 6.

²³ *Id.* at n.2.

²⁴ Ms. R.'s adjusted annual income in the prior order was \$1,403.22. Exh. 1 at pg. 11. Multiplying this amount times .60 for twelve children equals \$841.93 annually. Dividing the annual amount by 12 months equals \$70 per month.

all twelve children, effective March 1, 2009, with the specific amount of support for any given month depending on the number of children in foster care. For example, as of March 2009, Ms. R. had ten children in foster care and two children in the home, so her actual support obligation effective that month would be \$41.67, based on the provisions of Civil Rule 90.3(i) for third party custody. Another child returned home as of August 2009, so Ms. R.'s actual support obligation would be \$37.50 as of that month and ongoing.

Also based on the good cause provisions of Civil Rule 90.3(c), Ms. R.'s arrears for M. for January and February 2009 should be set at \$3 per month.

CSSD should be allowed to adjust Ms. R.'s actual child support amount to reflect the number of children in foster care, and to make such necessary changes in the future without having to modify her order, so long as the underlying child support amount remains at \$50 per month. Of course, Ms. R.'s support obligation remains subject to modification review in the future. This order arises out of the good cause provisions of Civil Rule 90.3(c).

V. Child Support Order

- Ms. R.'s child support obligation is modified to \$50 per month for twelve children, effective March 1, 2009;
- Ms. R. is liable for arrears for M. for January and February 2009 in the amount of \$3 per month;
- CSSD is directed to adjust Ms. R.'s child support amount to reflect the number of children in foster care, and to make such necessary changes in the future without having to modify her order;
- Ms. R.'s child support obligation remains subject to future modification, if it is warranted under Alaska law;
- All other provisions of CSSD's November 30, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 26th day of February, 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 15th 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.]