

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

IN THE MATTER OF: )

R. A. S. )

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OAH No. 10-0046-CSS

CSSD No. 001054752

**DECISION AND ORDER**

**I. Introduction**

The Obligor, R. A. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on January 7, 2010. The Obligee child is T., who is 15 years old.

The hearing was held on February 18, 2010. Both Mr. S. and the custodian, M. M. G., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on February 18, 2010.

Based on the evidence and after careful consideration, Mr. S.’s claim of financial hardship is granted. His modified ongoing child support is set at \$300 per month based on the good cause provisions of Civil Rule 90.3.

**II. Facts**

*A. Background*

Mr. S.’s child support obligation for T. was set at \$670 per month in 2007.<sup>1</sup> On October 2, 2009, Mr. S. requested a modification review.<sup>2</sup> On October 27, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Both parties provided income information.<sup>4</sup> On January 7, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.’s ongoing child support at \$398 per month, effective November 1, 2009.<sup>5</sup> He appealed on January 26, 2010, asserting that he is going through a

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

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

<sup>3</sup> Exh. 3.

<sup>4</sup> Exhs. 4 & 5.

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

divorce and has to pay \$620 per month for two younger children and that he is in danger of losing his housing.<sup>6</sup>

*B. Material Facts*

Mr. S. is a retired military member. He served tours in Kosovo and also in Iraq, where he spent over two years and suffered a combat-related brain injury that resulted in him being rated 80% disabled.<sup>7</sup> He spent one year in the Army's Wounded Warrior program before transitioning to civilian life.

Mr. S. is married but currently he is going through a divorce. He testified that he has been ordered to pay support in the amount of \$620 per month for the two children from this marriage, both of whom are younger than T. These children are in his home part-time, spending 3-4 overnights per week with the obligor. Mr. S.'s wife is apparently taking responsibility for the couple's mortgage; she currently lives with her parents and rents the home to her brother, but if he pays less than the mortgage amount of \$890 per month, Mr. S. said the balance is most likely covered by her parents.

Mr. S. receives disability payments totaling \$2,133 per month, from which is deducted \$144.28 per month for the premium payment on survivor benefits, so he actually receives \$1,988.72 per month.<sup>8</sup> Mr. S. testified that his regular monthly expenses include \$500 for the rent on a studio apartment; \$350-\$400 for food; \$126 for electricity; \$15 for water; \$71 for telephone and internet services; \$340 for the payment on a 2005 Toyota Takoma pickup; \$176 for gasoline; \$167 for vehicle and house insurance; \$20 for laundry; \$40 for health insurance; and \$217 for the payment on a MasterCard. These regular payments total \$2,022. Mr. S. said he cannot sell the Toyota until the divorce is finalized. In addition, Mr. S. stated his daughter attends a Christian school for which the tuition is \$4,500 per year and he owes \$150 for counseling for her.

Ms. G. is not currently employed; she is married to an E-6 in the military. The custodian reported that they do not have any extraordinary financial obligations other than normal living expenses, but she believes that a reduction in Mr. S.'s child support would create a financial hardship for her family.

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

<sup>7</sup> Exh. 4 at pgs. 1-3.

<sup>8</sup> Exh. 4 at pg. 1.

### III. Discussion

#### A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> 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."<sup>10</sup> 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, so this modification is effective as of November 2009.<sup>11</sup>

Mr. S.'s child support was set at \$670 per month for one child in 2007. His gross income for child support purposes at the time was \$47,795.<sup>12</sup> In response to this petition for modification review, CSSD modified Mr. S.'s child support to \$398 per month, which was calculated using his military retirement of \$2,133 per month, which totals \$25,596 per year.<sup>13</sup> The calculation of \$398 appears to be correct and it meets the necessary 15% difference that supports modification of a child support order.

#### B. *Financial Hardship*

Mr. S.'s 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

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<sup>9</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> 15 AAC 125.321(d). In this case, the notice was issued on October 27, 2009. Exh. 3.

<sup>12</sup> *In Re Swanson*; OAH No. 07-0705-CSS (February 14, 2008) [Exh. 1 at pg. 3].

<sup>13</sup> Exh. 6 at pg. 7.

varied."<sup>14</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>[15]</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>16</sup>

Based on the evidence presented, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. S. 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. Several factors constitute "unusual circumstances" in this case. Mr. S.'s situation is considerably different than it was when his child support was set at \$670 per month: he is now an Army veteran with a combat-related brain injury that resulted in him being rated 80% disabled; his income has been reduced by half and he is in danger of losing his housing. It is not known whether Mr. S. will be able to obtain employment in the future, but his intellectual difficulties were rather apparent at the hearing.

Ms. G. is married to an E-6 in the military. She is not employed, but the evidence as a whole indicates she is more able to absorb an adjustment in Mr. S.'s child support than he is able to meet the calculated amount. Even so, it is not fair to make Ms. G. and T. bear the entire brunt of Mr. S.'s reduced income. The child support for his younger children should also be reduced. If he were getting divorced in Alaska, Mr. S.'s support obligation for T. would be deducted from his income for the purpose of calculating a child support amount for his younger children. But because he is in another jurisdiction, there is no way of knowing how the divorce court will treat this support order.

Accordingly, Mr. S.'s child support should be modified to \$300 per month, a reduction of \$98 from the amount CSSD calculated. This is a modest decrease but hopefully one that will enable Mr. S. to keep his housing while his divorce litigation is pending.

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<sup>14</sup> Civil Rule 90.3(c).

<sup>15</sup> Civil Rule 90.3(c)(1).

<sup>16</sup> See Civil Rule 90.3, Commentary VI.E.1.

**IV. Conclusion**

Mr. S. met 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. There is good cause to reduce Mr. S.’s modified child support to \$300 per month, effective November 1, 2009.

**V. Child Support Order**

- Mr. S.’s child support obligation for T. is modified to \$300 per month, effective November 1, 2009 and ongoing;
- All other provisions of CSSD’s January 7, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 10<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 30th 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.]