

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

IN THE MATTER OF:)

E. D. L.)

OAH No. 10-0056-CSS

CSSD No. 001157490

DECISION AND ORDER

I. Introduction

The obligor, E. D. L., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on January 12, 2010. The Obligee child is M., who is nine years old.

The formal hearing was held on March 2, 2010. Both Mr. L. and the custodian, G. V. T., appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 2, 2010.

Based on the record and after careful consideration, Mr. L.’s child support is set at \$529 per month, effective March 1, 2009, based on his actual 2009 income.

II. Facts

A. History

CSSD received an application for child support services from Ms. T.’s state of residence on March 2, 2009.¹ On October 20, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. L.² He requested an administrative review and provided income information.³ On January 12, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. L.’s ongoing child support at \$544 per month, with arrears of \$5,984 for the period from March 2009 through January 2010.⁴ Mr. L. appealed on January 29, 2010, asserting he and Ms. T. agreed “a long time ago” that he would give up his parental rights.⁵

¹ Exhs. 1 & 2.

² Exh. 3.

³ Exhs. 4 & 6.

⁴ Exh. 7.

⁵ Exh. 8.

A. *Material Facts*

Mr. L. is in the moving business. He works for a local moving company and earns \$19 per hour for full-time work. In 2009 he had two part-time jobs, but he currently has just one employer. In 2009, Mr. L. received \$22,816.60 from G. N. V. L., Inc.; \$6,444.43 from A. M. and S.; and \$5,404.70 from U. F.T.⁶ Mr. L. earned a total of \$34,665.73 from these three employers and he received \$2,541 in unemployment benefits.⁷ These figures, when inserted into CSSD's online child support calculator, yield a child support amount of \$529 per month.⁸

Mr. L. testified he was injured on the job on December 18, 2009, and was off work until about the second week in February. The obligor said he asked his doctor to clear him to return to work before he was ready because he could not afford to live on the workers compensation benefits he received.

Mr. L. and his girlfriend, C., have two children in the home, a three-year-old and a one-year-old. C. is a full-time student and is not currently employed. Their one-year-old son has allergies and requires a special diet and foods. For example, he cannot eat processed foods or foods containing certain chemicals, and in the protein category, he is restricted to eating game meat and seafood.

Mr. L. listed regular monthly expenses of \$1,075 for rent; \$600 for food; \$135 for Internet and telephone; \$120 for electricity; \$90 for cable TV; \$343.14 for the payment on a 2001 Chevrolet Suburban; \$120 for gasoline; \$60 for vehicle maintenance; \$135 for vehicle insurance; \$250 for personal care items, including diapers; and \$36.67 for the minimum payment on a credit card debt of \$1,024.27.⁹ Mr. L. indicates the children qualify for Denali KidCare health insurance.

Ms. T. lives out of state and is currently unemployed. She lives with her boyfriend, R., who is in the U.S. Air Force, and her two children: the obligee, M., and a two-year-old son. The children qualify for Medicaid benefits and food stamps and the custodian receives child support.

⁶ Exh. 11 at pgs. 2-4 (Mr. L. completed a blank expenses form previously marked as Exhibit 9 – the completed form and additional income documents have been renumbered as Exhibit 11).

⁷ See Exh. 10 at pg. 2.

⁸ Attachment A.

⁹ Exh. 11 at pg. 1.

III. Discussion

A. *Mr. L.'s Income*

A parent is obligated both by statute and at common law to support his or her children.¹⁰ This obligation begins when the child is born, but by regulation, CSSD only 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).¹¹ In this case, Ms. T. requested child support services in March 2009, so that is the first month Mr. L. is obligated to pay support in this administrative child support action.

As the person who filed the appeal, Mr. L. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative Child Support and Medical Support Order is incorrect.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," minus mandatory deductions such as taxes and Social Security. CSSD calculated Mr. L.'s 2009 child support obligation at \$544 per month, based on its estimate that he would earn \$35,849.95 in 2009.¹³ The calculation also includes his unemployment benefits of \$2,541.¹⁴ Mr. L. was able to provide his 2009 W-2's for the hearing; they indicate his actual earnings for the year were \$34,665.73, a figure about \$1,200 lower than CSSD's estimate.¹⁵ With this correction made to Mr. L.'s income, the child support amount is correctly calculated at \$529 per month.¹⁶ It is from this figure that his hardship request will be considered.

B. *Financial hardship*

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

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² 15 AAC 05.030(h).

¹³ *See* Exh. 7 at pg. 6.

¹⁴ *Id.* *See also* Exh. 10 at pg. 2.

¹⁵ Exh. 11 at pgs. 2-4.

¹⁶ Attachment A.

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, 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).¹⁹

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. L. 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. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for M.

Mr. L. maintains that he cannot meet all of his financial obligations, but his monthly bills seem to be on average, if not a little lower than most people's expenses. The crux of the problem for Mr. L.'s household is that his girlfriend, C., is not working because she is attending school full-time and taking care of their two young children. But Mr. L. and C. may need to make some difficult financial choices either to reduce their bills or bring in more income. Mr. L. has a duty to support M., and because she is older than his younger children, his duty to her takes priority over other debts and obligations. M. is entitled to receive child support in an amount commensurate with Mr. L.'s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. L.'s financial situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated under the rule for M. should be lowered.

IV. Conclusion

Mr. L. proved that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His child support is now correctly calculated at \$529 per month, and this figure should be adopted. Mr. L. did not meet his burden

¹⁷ Civil Rule 90.3(c).

¹⁸ Civil Rule 90.3(c)(1).

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

of proving by clear and convincing evidence that manifest injustice would result if his child support amount calculated under Civil Rule 90.3 were not varied.

V. Child Support Order

- Mr. L. is liable for child support for M. in the amount of \$529 per month for the period from March 2009 forward;
- All other provisions of the January 12, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 22nd 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 9th 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.]