

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

IN THE MATTER OF)
)
 J. F.) OAH Case No. 10-0072-CSS
) CSSD Case No. 001096411
_____)

DECISION & ORDER

I. Introduction

The obligor, J. F., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 8, 2010. Mr. F. and the custodian, J. H., both appeared by telephone at a hearing held on March 10, 2010. Erinn Brian represented CSSD. The child is A. H.

Mr. F.'s child support obligation is set at \$1,094 per month for one child, effective July 1, 2009.

II. Facts

This case arises from a request by the custodian to modify a support order issued on May 3, 2000, which had set support at \$306 per month for one child. The modified order set support at \$909 per month, effective July 1, 2009. Based on the most recent income information available, CSSD has calculated Mr. F.'s monthly support obligation to be \$1,094 per month for one child.¹

The parties both provided testimony about their current financial situations. Mr. F.'s gross income, including military allowances, is \$73,614.60, and his adjusted annual income is \$65,663.52. Mr. F. pays child support in the amount of \$650 per month under an order from another state for a child of a different relationship who is younger than A. His monthly expenses include rent of \$850 per month,² \$607 per month for payments on a 2007 Chrysler Sebring on which he still owes about \$20,000, and \$410 per month for gas, maintenance, and insurance on the car. Mr. F. spends about \$125 per month for his cell phone, about \$250 for food, and \$145 on miscellaneous other expenses. This results in a monthly budget of \$3,037 in addition to the new support amount of \$909, for a monthly amount of \$3,946 and an annual total of \$47,352.

The principal financial consideration facing Mr. F. at this time concerns his fiancée. Mr. F. and his fiancée had been living together in a residence in California. When she was diagnosed with cancer, Mr. F.'s fiancée moved to Washington State for treatment and to be near her family,

¹ Exhibit 8.

² \$100 of this amount is being applied toward a deposit. The basic rent is only \$750 per month.

and Mr. F. rented a room in someone else's house. Because his fiancée could not work and faced many expenses, Mr. F. ran up a combined debt of about \$30,000 on eight or nine credit cards. Mr. F. estimates that the total monthly payments on these cards would be about \$750, but he is not currently making payments and most of the accounts are in collection. Mr. F. now spends about \$1,000 supporting his fiancée in addition to his own monthly expenses, and he is currently in the process of declaring bankruptcy.

Ms. H. also testified about her financial situation. In addition to A., Ms. H. also has an eight-year-old daughter living in her household. Ms. H. is the only adult in the household. Ms. H. earns about \$1,300 in gross income and nets about \$1,000 per month. She also receives \$336 per month in support for her daughter. Ms. H. rents one unit in a duplex for \$650 per month. Ms. H. pays \$200 per month on a 1998 Ford Explorer, on which she still owes about \$4,000. Ms. H. pays \$450 per month for gas, insurance, and maintenance on her car, although she paid \$1,000 in repairs last month. Ms. H.' utility and phone bills total about \$210, and she pays about \$375 to \$475 on other miscellaneous expenses, depending on the kids' needs for school clothes. This comes to a total monthly budget of \$1,510 to \$1,610.

III. Discussion

Based on the most recent available information regarding his income, CSSD has calculated Mr. F.'s monthly support obligation to be \$1,094 per month for one child.³ While he does not dispute the calculation, Mr. F. states that the sudden dramatic increase in support, coming on the heels of his fiancée's cancer and his impending bankruptcy, presents too extreme of an adjustment at one time.

Support in a primary custody situation is generally calculated under Civil Rule 90.3(a) as twenty percent of the obligor's adjusted gross income. Support may be varied from this formula "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."⁴ Mr. F. carries the burden of proof.⁵

Clear and convincing evidence is a high standard of proof. In this case, it must be proven by this standard that injustice would result that is "manifest," that is, injustice that is obvious or clearly apparent.

The shock to a household budget when a monthly obligation changes from \$306 per month to \$1,094 is obvious. As Mr. F. points out, the shock of the increase is compounded

³ Exhibit 8.

⁴ Civil Rule 90.3(c)(1).
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because it has been about ten months since Ms. H. requested modification, and the modification will therefore include an amount of arrears that will be added to the ongoing amount until the account is again current. There can be no doubt that with the debts he has incurred and the amounts he spends to care for and support his fiancée, Mr. F.'s budget will be stretched quite dramatically if the standard calculation of support is applied to this case.

The burden of an abrupt increase in Mr. F.'s monthly obligation must be considered in light of the reason for the dramatic nature of the increase. The reason the increase is so stark, it appears, is that for a number of years Mr. F. has been paying substantially less in support than his income merited. Both parents have failed to notify CSSD for more than a decade that Mr. F.'s income has been increasing over the years. It is probable that Mr. F.'s change in income would have justified several modifications over the period from 2000 to the present. Had Mr. F. requested a modification every year or two, or every time his income increased, the change would have been more gradual and perhaps easier to budget for. While the change now is dramatic, it does not make sense to lessen the shock by reducing the current support amount when for some time Mr. F. has been paying less in support than his income justifies. While the extremity of the change is obvious and clearly apparent, injustice resulting from the change is not.

One other consideration in favor of applying the standard Civil Rule 90.3(a) formula is the relative obligations Mr. F. has to his fiancée and to his child. One cannot fault Mr. F. for supporting his fiancée in a time of medical crisis, but from a legal standpoint, at least until he is married, Mr. F. does not have any legal obligation to support his fiancée. He does have a legal obligation to support his child. While Mr. F.'s fiancée may legitimately be in need of financial support at this time, A. is not required to subsidize this support, nor is Ms. H. If Mr. F. makes the understandable decision to provide extra support for his fiancée, he is not entitled to look to Ms. H. or to A. for reimbursement, regardless of the effect this may have on his finances.

In considering all of the circumstances surrounding this case, it cannot be said that application of the standard rule would result in manifest injustice. Mr. F.'s annual expenses, including the increased support amount of \$909 per month, come to a total of \$47,352, well below his adjusted annual income of \$65,663.52. Even if he continues to spend \$1,000 per month in support of his fiancée, there is still room in Mr. F.'s budget, though not quite enough to be making the payments on his credit cards. Mr. F. had planned to discharge these obligations in

bankruptcy before learning of his increased support amount.⁶ The evidence shows that Mr. F. should be able to afford the increased support amount and have some money left over each month, without threatening his ability to drive a relatively nice late-model car that probably exceeds the needs of basic transportation.

In contrast, Ms. H. brings in net income, including all child support, of \$19,704 per year. With the increase in income, Ms. H. would receive a total net of \$26,940 per year. Ms. H.' total monthly expenses are in a range of \$1,885 to \$1,995 per month, or \$22,620 to \$23,820 per year. According to the evidence in this record, Ms. H.' household is already in the red, and even with the increase her margin of excess will be less than \$400 per month. With two children in the household and a twelve-year-old vehicle in Alaska, Ms. H.' risk of unforeseen necessary expenses will be higher than Mr. F.'s.

IV. Conclusion

While Mr. F.'s finances are likely to be strained both by the increased support amount and the needs of his fiancée, Mr. F. has not met his burden of demonstrating by clear and convincing evidence that applying the standard support calculation in this case will result in manifest injustice.

V. Order

IT IS HEREBY ORDERED that Mr. F.'s ongoing support obligation be set at \$1,094 per month for one child, effective July 1, 2009. All other elements of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on January 8, 2010, shall remain in effect.

DATED this 22nd day of March, 2010.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

⁶ It is uncertain that Mr. F. would qualify for bankruptcy based on the evidence in this record. If he can qualify for a consolidated loan it is possible that Mr. F. may be able to reduce his consumer debt to a more manageable monthly amount.

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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of April, 2010.

By: Signed
Signature
Dale A. Whitney
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]