

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

IN THE MATTER OF: )  
 )  
G. R. F. ) OAH No. 10-0073-CSS  
 ) CSSD No. 001160431  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, G. R. F., has appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on February 1, 2010. The Obligee child is A., who is fifteen years old.

The formal hearing was held on March 10, 2010. Ms. F. appeared by telephone. The custodian in this foster care case is the State of Alaska. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 10, 2010.

Based on the record as a whole and after careful consideration, Ms. F.'s child support is set at \$50 per month, based on the good cause provisions of Civil Rule 90.3(c).

**II. Facts**

*A. History*

The State of Alaska took custody of A. in March 2009.<sup>1</sup> On November 24, 2009, CSSD served an Administrative Child Support and Medical Support Order on Ms. F.<sup>2</sup> She requested an administrative review and provided income information.<sup>3</sup> On February 1, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Ms. F.'s ongoing child support at \$300 per month for one child, with arrears of \$1,910 for the period from March 2009 through February 2010.<sup>4</sup> Ms. F. appealed on February 10, 2010.<sup>5</sup>

*B. Material Facts*

Ms. F. has three children, A., L. and D. A., the oldest, was taken into state custody in March 2009. L., who is 17, and D., who is 11, both live in the home with Ms. F., along with L.'s

---

<sup>1</sup> Exh. 7 at pg. 5.  
<sup>2</sup> Exh. 1.  
<sup>3</sup> Exhs. 2-4.  
<sup>4</sup> Exh. 5.

daughter, R. L. currently attends school and receives \$575 per month on a public assistance cash grant in addition to full-time subsidized child care for R. Ms. F. provides the child care services for her granddaughter and is paid \$492 per month.<sup>6</sup> Ms. F.'s income from child care and L.'s public assistance cash grant constitute the only funds coming into Ms. F.'s home, so L. has to help pay the household expenses.

Ms. F. listed regular monthly expenses of \$1,035, which includes \$532 for rent; \$125 for utilities; \$100 for cable; \$100 for telephone and two Lifeline cell phones; \$40 for gasoline; and \$138 for car insurance. Ms. F. receives \$808 in food stamps per month.

Ms. F. does not receive child support for L. She testified that CSSD has an open case against L.'s father but cannot locate him. Likewise, Ms. F. testified that L. has a child support order for R. but it is not being paid.

### **III. Discussion**

Ms. F. filed an appeal to request that she be granted a financial hardship variance from the child support determination based on the "unusual circumstances" provisions of Civil Rule 90.3(c). She did not contest the accuracy of CSSD's calculations.

A parent is obligated both by statute and at common law to support his or her children.<sup>7</sup> This obligation begins when the child is born.<sup>8</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 notice of his or her support obligation.<sup>9</sup> A. went into state custody in March 2009, so that is the first month for which CSSD may charge Ms. F. with child support. The person who filed the appeal, in this case, Ms. F., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.<sup>10</sup>

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

---

<sup>5</sup> Exh. 9.

<sup>6</sup> Exh. 4 at pg. 2.

<sup>7</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>8</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>9</sup> 15 AAC 125.105(a)(1)-(2).

<sup>10</sup> 15 AAC 05.030(h).

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). 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>[11]</sup>

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>12</sup>

Technically, there is no official recognition of Ms. F.’s younger children and her grandchild that would result in the reduction of her child support obligation. In general, Civil Rule 90.3 states that a parent’s child support obligation should not be reduced because that parent has younger children.<sup>13</sup> This is because a parent has the choice not to start a second family if he or she cannot support the children from his or her first family. That reasoning does not apply in Ms. F.’s case, however, because A. and her younger children are all in the same family; the reason her children are separated is because the state has taken custody of A. The commentary to the rule states that the court or administrative tribunal “should reduce child support if the failure to do so would cause substantial hardship to the ‘subsequent’ children.”<sup>14</sup>

It is clear that Ms. F. does not have sufficient income with which to pay all of her bills and her child support obligation as calculated, even with L.’s assistance. The obligor is not in a position to try to return to the work force at this time because she is providing child care for her granddaughter and this arrangement appears to be the most advantageous for all concerned. Also, to provide child care for additional children would require that Ms. F. get a business license and take a CPR class, which she couldn’t get away for because she’s already working full-time taking care of R.

Based on the evidence as a whole, Ms. F. has proven by clear and convincing evidence that manifest injustice would result if her child support were not varied from the amounts

---

<sup>11</sup> Civil Rule 90.3(c)(1).

<sup>12</sup> Civil Rule 90.3, Commentary VI.B.

<sup>13</sup> Civil Rule 90.3, Commentary VI.B.2.

calculated pursuant to Civil Rule 90.3. Without an adjustment, there is clear and convincing evidence that Ms. F.'s subsequent children will suffer substantial hardship because she will be unable to pay all of her household expenses and will be in danger of losing the family's housing.

Therefore, Ms. F.'s child support should be set at the minimum amount of \$50 per month. This reduction relieves some of the current financial burden on Ms. F., but at the same time provides the state with at least some financial support for A.

#### **IV. Conclusion**

Ms. F. met her burden of proving by clear and convincing evidence that unusual circumstances exist in this case and that manifest injustice would result if her child support obligation were not varied from the amounts calculated by CSSD. A child support amount of \$50 per month represents a balance of the totality of the circumstances in this case and it should be adopted.

#### **V. Child Support Order**

- Ms. F. is liable for child support for A. in the amount of \$50 per month, effective March 2009, and ongoing;
- All other provisions of the February 1, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30<sup>th</sup> day of March, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

---

<sup>14</sup> *Id.*

**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 16<sup>th</sup> 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.]