

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

IN THE MATTER OF:	)	
	)	OAH No. 10-0094-CSS
E. M. A.	)	CSSD No. 001150756
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**DECISION AND ORDER**

**I. Introduction**

The obligor, E. M. A., has appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 21, 2010. The obligee child is E., who is 3 years old. The custodian is A. N. F.

The formal hearing was held on March 23, 2010 and May 11, 2010. Mr. A. appeared by telephone and in person. Ms. F. did not participate in the first hearing but appeared in person for the second. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 11, 2010.

Based on the record and after careful consideration, Mr. A.'s request for a hardship variance is denied. His child support is set at \$625 per month for September 2006 through December 2006; \$787 per month for 2007; \$1,006 per month for 2008; \$670 per month for 2009; and \$640 per month for 2010, and ongoing. He is entitled to a credit of \$1,330 for direct payments made to Ms. F.

**II. Facts**

*A. Procedural History*

On June 9, 2009, CSSD served a Notice of Paternity and Financial Responsibility on Mr. A.<sup>1</sup> He acknowledged paternity and submitted DNA results from paternity tests already completed and income information.<sup>2</sup> CSSD issued an Order Establishing Paternity on July 16, 2009.<sup>3</sup> On November 19, 2009, CSSD served an Administrative Child and Medical Support Order on Mr. A.<sup>4</sup> He requested an administrative review and provided additional income information and copies of checks to Ms. F. showing direct support payments.<sup>5</sup> Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on

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1 Exh. 1.  
2 Exhs. 2 & 3.  
3 Exh. 4.  
4 Exh. 5.  
5 Exhs. 6-8.

January 21, 2010, that set Mr. A.'s ongoing child support at \$965 per month, with arrears of \$41,037 for the period from September 2006 through November 2009.<sup>6</sup> Mr. A. filed an appeal on February 18, 2010, asserting the 2009 income figure was incorrect, he had not yet worked in 2010 and he had been E.'s "main provider."<sup>7</sup>

*B. Material Facts*

Mr. A. and Ms. F. had a brief relationship during the winter of 2005,<sup>8</sup> while she was still a minor. They never cohabitated. Their daughter E. was born in September 2006 and began receiving public assistance benefits at that time. On September 21, 2006, just a few days after the child was born, the parties had paternity testing completed that confirmed Mr. A. is E.'s biological father.<sup>9</sup>

When she applied for assistance, Ms. F. did not inform the Division of Public Assistance or CSSD that she knew the identity of her daughter's father. On at least three separate occasions, Ms. F. withheld Mr. A.'s identifying information from the authorities so that a child support obligation could not be established against him.<sup>10</sup> Ms. F. testified that she kept his last name secret because she was afraid that if she identified Mr. A. to them, he would disappear and no longer be involved in their lives or, even worse, that he would wrest custody of E. away from her so he wouldn't have to pay child support.<sup>11</sup>

Although he may have suspected otherwise, Mr. A. did not know for sure that Ms. F. was receiving public assistance. At the suggestion of his sister-in-law, Mr. A. specifically asked Ms. F. if she was receiving public assistance for E. and she answered in the negative. He asked her again approximately a year later but her answer was the same. Given Ms. F.'s answers, Mr. A. simply assumed the custodian's mother supported Ms. F. and E. because they lived with her and she was employed outside the home.

After E. was born, Mr. A. had fairly regular contact with the F. family. He provided some of the items Ms. F. needed to take care of E. such as diapers, clothes and toys. He also had visitation with E. for a few hours during a weekday or sometimes overnight on a weekend. However, Ms. F. exercised fairly tight control over Mr. A.'s time with E. For example, she

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<sup>6</sup> Exh. 9.

<sup>7</sup> Exh. 10.

<sup>8</sup> Exh. 12 at pg. 5.

<sup>9</sup> Exh. 2 at pg. 2.

<sup>10</sup> See Exh. 12 at pg. 5 (October 2006); Exh. 13 at pg. 2 (February 2007); and Exh. 14 at pg. 2 (May 2007).

<sup>11</sup> Ms. F.'s mother confirmed the custodian's testimony, stating that she had overheard many of the telephone conversations Ms. F. and Mr. A. had about E.

would not let Mr. A. take E. to Texas for a family wedding in 2008, ostensibly because the child is still very young, but also in part because the custodian was afraid he would not return E. to Alaska. Ms. F. asked him for money at times, but he mostly refused her requests. Mr. A. gave her three checks in 2007: \$150 in July; \$100 in August; and \$80 in December.<sup>12</sup> In 2009, he also gave her three checks: \$250 in July; \$500 in August; and \$250 in September.<sup>13</sup> These payments total \$1,330.

For reasons still unknown, Ms. F. provided CSSD with Mr. A.'s full name and contact information in May 2009.<sup>14</sup> CSSD initiated paternity establishment, which Mr. A. did not contest. He copied CSSD with the DNA test results the parties obtained after E. was born and the examination of those results – specifically, the test dates – led to the realization that Ms. F. had been keeping Mr. A.'s identity secret from CSSD all along. Ms. F. and E. no longer live with the custodian's mother, although little else is known of their circumstances.

Mr. A. has been employed by No Name Services, a wholly owned subsidiary of the No Name Corporation, since mid-2005.<sup>15</sup> He works in the Anchorage fabrication shop. His employer reported Mr. A.'s earnings to the Alaska Department of Labor and Workforce Development as follows: \$46,424.05 in 2006; \$59,952.15 in 2007; \$70,524.17 in 2008; and \$50,636.22 in 2009.<sup>16</sup> His 2008 earnings were higher than previous years because he had a significant amount of overtime that year. In contrast, his 2009 earnings were somewhat lower because he was laid off in September 2009 and did not return to No Name Services until March 2010. Mr. A. received unemployment benefits during his layoff.

Mr. A. is currently working at a new job for the company and earns \$26 per hour, \$2 per hour less than in his previous position. Because of his layoff in 2009, Mr. A. took out a loan from his 401(k) retirement account in the total amount of \$22,382.76 in September and October 2009.<sup>17</sup> No Name corporation did not report this amount to the Department of Labor as earnings and it should not be included in his income for the child support calculation in 2009.<sup>18</sup>

Mr. A. and his fiancé, M., live together and have a child younger than E. in the home. M. is going to school and working part-time; she earns about \$1,200 per month. Mr. A. listed

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<sup>12</sup> Exh. 8 at pgs. 12-14.

<sup>13</sup> Exh. 8 at pgs. 7-11.

<sup>14</sup> Exh. 15 at pg. 1.

<sup>15</sup> Affidavit of Andrew Rawls dated April 26, 2010. This affidavit is more comprehensive than a similar one filed with CSSD's Pre-Hearing Brief and numbered as Exh. 11.

<sup>16</sup> *Id.*

<sup>17</sup> Exh. 8 at pgs. 3-6.

<sup>18</sup> Rawls affidavit at pg. 1.

monthly bills of approximately \$4,693, which includes \$975 for rent; \$450 for food; \$70 for electricity; \$78 for Internet services; \$80 for cable; \$176 for three cell phones; \$367 for the payment on a 2003 Ford Expedition purchased in 2008; \$780 for gasoline for two vehicles; \$300 for vehicle maintenance; \$317 for vehicle insurance; \$40 for renter's insurance; \$10 for entertainment; \$350 for personal care items; and \$700 for daycare.<sup>19</sup> Mr. A. has \$280 in unpaid medical expenses and about \$11,250 in unpaid credit card bills that are all five months in arrears.<sup>20</sup>

### III. Discussion

Mr. A. did not challenge CSSD's child support calculations for 2006 through 2008. However, he did contest the income CSSD attributed to him for the 2009 and 2010 calculations, claiming he did not earn the amounts CSSD used. Also, Mr. A. claims he was E.'s main provider so he does not agree that the items he gave to Ms. F. for E. were gifts.<sup>21</sup> Finally, the obligor stated he has another child to support and he requested a variance due to financial hardship.

#### A. *Mr. A. Must Reimburse the State for E.'s Public Assistance*

A parent is obligated both by statute and at common law to support his or her children.<sup>22</sup> If the children receive public assistance, the noncustodial parent is obligated to reimburse the state for those benefits – in the form of child support payments calculated pursuant to Civil Rule 90.3 based on the parent's income.<sup>23</sup> 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 children.<sup>24</sup> In this case, Ms. F. began receiving public assistance on E.'s behalf in September 2006, the month E. was born. Thus, that is the first month for which Mr. A. is obligated to pay support for her through CSSD.

Mr. A. asserts that he was providing for E.'s support by purchasing items Ms. F. needed for the child. He cannot produce any receipts for the items he gave Ms. F. She verified that he did provide some of the supplies that E. needed, but the custodian also could not specifically

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<sup>19</sup> The daycare figure is included although Mr. A. testified he would be putting his child in a Headstart program and would not incur this cost in the future.

<sup>20</sup> Exh. 14 at pg. 9.

<sup>21</sup> See Exh. 10.

<sup>22</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>23</sup> AS 25.27.120(a).

<sup>24</sup> 15 AAC 125.105(a)(1)-(2).

name the items he gave her. The only support Mr. A. can quantify is the checks he gave Ms. F. – \$330 in 2007 and \$1,000 in 2009.

Mr. A. is entitled to a credit against his child support order for the total \$1,330 he paid Ms. F. but he is not entitled to a credit for the products he gave her for E.'s care. Neither party is able to state with any specificity what items he provided; also, Mr. A. cannot provide receipts or otherwise account for the cost of the items. Thus, it is not possible to state to what extent he was supporting E. and for this reason there is no specific amount that can be attributed to the items he provided. Mr. A. objects to these items being called gifts, but there is insufficient evidence in the record upon which to characterize them as child support.

The core issue for Mr. A. in this appeal is that he did not know E. was receiving public assistance, so he believes he should not be liable for paying support during the time periods she was receiving benefits.

Regardless whether he knew E. was on public assistance, Mr. A. is still obligated to reimburse the state for the benefits she received. There is no provision in the law that allows an obligor parent to circumvent repayment merely because he or she did not know the child was receiving benefits. Mr. A. may not have known for sure, but he suspected as much, as evidenced by his questions to Ms. F. about public assistance. More importantly, though, Mr. A. knew he had a child to support and that the child's mother was young and unemployed. A claim that he should not have to reimburse the state because he did not know she was receiving public assistance benefits is disingenuous and greatly lacking in credibility.

*B. Child Support Calculations*

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions for things such as taxes and Social Security. Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources."

CSSD's amended child support order calculated Mr. A.'s child support at \$625 per month for 2006; \$787 for 2007; \$1,006 for 2008; \$1,338 for 2009; and \$965 for 2010 and ongoing.<sup>25</sup> Mr. A. did not challenge the 2006-2008 calculations so after the hearing CSSD revised only the calculations for 2009 and 2010. The revised 2009 calculation is based on Mr. A.'s actual income for the year and equals \$670 per month.<sup>26</sup> All of the calculations for 2006 through 2009 are now correct, based on Mr. A.'s actual income information.

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<sup>25</sup> Exh. 9 at pgs. 6-10.

<sup>26</sup> Exh. 17.

The revised 2010 calculation of \$640 per month was based on an estimate that after he returned to work in 2010, Mr. A. would earn \$44,720 this year from 43 weeks of work paid at \$26 per hour, plus unemployment benefits of \$1,772 and the estimated PFD of \$1,305.<sup>27</sup> This was a reasonable estimate of his income and is thus a correct child support amount for 2010.

*C. Financial Hardship*

Mr. A. claims he cannot afford to pay the child support calculated by CSSD. 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." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case also 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 . . . .  
[28]

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.<sup>[29]</sup>

Based on the totality of circumstances, Mr. A.'s case does not present "good cause" for a variance from the amounts calculated from his actual income. Mr. A. did not prove by clear and

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<sup>27</sup> Exh. 18. CSSD typically uses the previous year's PFD amount in child support calculations until the current year's figure is announced in September.

<sup>28</sup> Civil Rule 90.3(c)(1).

<sup>29</sup> Civil Rule 90.3, Commentary VI.E.1.

convincing evidence that manifest injustice would result if his child support obligation were not reduced from the amount calculated.

Mr. A.'s financial situation is somewhat strained at this time because he is having to pay both the monthly support amount and a certain portion of the arrears. In addition, he supports a younger child in the home. However, Mr. A.'s fiancé is working and contributing to the household, so he is not wholly responsible for supporting his younger child. Mr. A. and M. may have to make some difficult budgeting decisions to get their finances in shape – Mr. A. may have to seek an increase of hours at work, find a second job, or M. may have to work more hours, but Mr. A.'s situation does not constitute "unusual circumstances" that warrant a variation in his child support obligation. Also, it should be noted that CSSD's revised calculation of the 2010 support amount at \$640 per month has significantly reduced his ongoing support and will better enable him to pay toward the arrears.

#### **IV. Conclusion**

Mr. A. is obligated to support E. as of September 2006, the first month she received public assistance benefits. That he did not know for certain she was receiving benefits is not sufficient to relieve him of his obligation to support her. He is entitled to a credit for direct child support payments made to Ms. F. in the total amount of \$1,330.

Mr. A. met his burden of proving that the 2009 and 2010 child support calculations were incorrect. However, he did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his support were not varied from the amounts calculated under Civil Rule 90.3(c). The child support amounts calculated for 2006 through 2010 should be adopted.

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

1. Mr. A. is liable for child support in the amount of \$625 per month for September 2006 through December 2006; \$787 per month for 2007; \$1,006 per month for 2008; \$670 per month for 2009; and \$640 per month for 2010, and ongoing;
2. Mr. A. is entitled to a credit in the total amount of \$1,330 for direct payments made to Ms. F. as follows: \$150 in July 2007; \$100 in August 2007; \$80 in December 2007; \$250 in July 2009; \$500 in August 2009; and \$250 in September 2009;

3. All other provisions of CSSD's January 21, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 9<sup>th</sup> day of June, 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 28<sup>th</sup> day of June, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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