

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

IN THE MATTER OF)	OAH No. 10-0097-CSS
A. J. A.)	CSSD No. 001157926
)	
_____)	

DECISION AND ORDER

I. Introduction

On March 22, 2010, a formal hearing was held to consider the child support obligation of A. J. A. (Obligor) for the support of his children, B. and C. (Obligees).¹ The Custodian, D. N. E.-A., participated. Mr. A. also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on April 30, 2010.

This case is Mr. A.'s appeal of the Division's order establishing his child support obligation for his children, B. and C. Having reviewed the record in this case and after due deliberation, I concluded that the amounts set in the Division's Amended Administrative Child and Medical Support Order should be adjusted in accordance with the Division's latest calculations, which include a deduction for supporting a child of another relationship, Mr. A.'s oldest child, in his home.

II. Facts

Ms. E.-A. and Mr. A.. were married, and both were living together with their children in Alaska before the separated. Ms. E.-A. applied for the Division's services for her children, B. and C., a few days after she left Alaska in March of 2009. Paternity is not in dispute. Mr. A. was named as B.'s and C.'s father on their birth certificates.²

The Division served Mr. A. with an Administrative Child and Medical Support Order on September 15, 2009.³ Mr. A. requested an administrative review.⁴

¹ The hearing was held under Alaska Statute 25.27.170.

² Recording of Hearing.

³ Exhibit 1.

⁴ Exhibit 3.

The Division issued an Amended Administrative Child and Medical Support Order on January 12, 2010. The Division set Mr. A.'s ongoing child support at \$1,452 per month. The order also set monthly arrears going back to March of 2009.

Mr. A. requested a formal hearing.⁵ Mr. A. raised issues related to his payments of child support and Division's withholding amounts from his pay. Mr. A. also challenged the Division's authority to establish a child support order. Mr. A. argued that his child support should be reduced in order to prevent financial hardship.⁶ Mr. A. provided information about his household's finances.⁷

After the hearing, the Division filed new calculations as requested. These calculations include a deduction from Mr. A.'s income for supporting his oldest child in his home. These calculations result in a monthly child support amount of \$1,290.⁸

Based on the evidence in the record, I find that it is more likely than not that these calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). There is not clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not lowered.⁹

After the hearing, the Division also agreed that Mr. A. was entitled to credit for direct payments of \$1,104 for the months of March of 2009 through January of 2010.

III. Discussion

Mr. A. challenged the Division's authority to issue a child support order because Ms. E.-A. left Alaska shortly before she requested the Division's services and he was no longer living in Alaska when the order was first issued. Mr. A. also argued that he was no longer an Alaska resident when the Division established the child support order. Mr. A. asserted that he was sent out of Alaska for military detention, and had been told that he was going to be transferred, before the Division established the child support order.

⁵ Exhibits 6 & 7.

⁶ Exhibits 6 & 7.

⁷ Recording of Hearing & Ex. 8.

⁸ Ex. 11.

⁹ Recording of Hearing & Ex. 11.

Under Alaska Statute 25.27.140(a) the Division has the authority to establish a child support order if no support order has previously been established for the children. This broad authority is limited under Alaska Statute 25.25.201, which sets out when the Division and Alaska courts have jurisdiction over a nonresident to establish a child support order.

Even if Mr. A. was a nonresident when the Division established his child support obligation, which is far from clear, the Division had jurisdiction to issue this child support order for B. and C. Alaska Statute 25.25.201(3) gives the Division jurisdiction over a nonresident who resided with the child in Alaska. There is no dispute that Mr. A. lived with B. and C. in Alaska.¹⁰

Mr. A. also argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. A. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Mr. A. only met his burden in showing that he is entitled to an additional deduction for caring for an older child in his home.

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹² A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹³ Good cause includes a finding of unusual circumstances.¹⁴

Mr. A. earns a good income.¹⁵ Mr. A. has some debt and is having difficulty trying to make his bank payments on some rental property he owns that currently does not have a tenant. Mr. A. did not present evidence that he has any unusual expenses except for the fact he is a single parent and does not receive any child support from his older child's mother.

Mr. A. admitted that he has not attempted to get child support for his older child and the evidence shows that the child's mother is a registered nurse who could pay child support.¹⁶ Mr. A.'s younger children should not have their child support reduced to help pay the additional costs

¹⁰ Recording of Hearing.

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² Alaska Civil Rule 90.3(a)(1)

¹³ Alaska Civil Rule 90.3(c).

¹⁴ Civil Rule 90.3(c)(1)(A).

¹⁵ Ex. 11.

¹⁶ Recording of Hearing.

of supporting Mr. A.'s older child that result from his failure to obtain a child support order against that child's mother.

In this order for B. and C. that Mr. A. is asking to have reduced, Mr. A. is only being asked to pay his share of the cost of B. and C.'s support. Mr. A.'s child support obligation for B. and C. has already been reduced by deducting his share of the cost of his older child in the Division's latest order. Mr. A.'s duty to pay the correct percentage of his income toward the support of his child, B. and C., takes precedence over his debts and other financial obligations.¹⁷

Mr. A. may have difficulty meeting his support obligation for B. and C., but this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). Mr. A. did not provide clear and convincing evidence that manifest injustice will result if the child support amount of \$1,290 per month based on his current income and calculated under Civil Rule 90.3(a) is not decreased.

Mr. A. may be entitled to additional credits for direct payments of child support that he paid to Ms. A. In order to obtain credit for any additional payments, not credit in this order, Mr. A. needs to work with his Division caseworker.

IV. Conclusion

Mr. A. failed to meet his burden of proof to show that his child support arrears and ongoing child support should be set lower than the monthly amounts in the Division's latest calculations.

CHILD SUPPORT ORDER

1. Mr. A.'s ongoing child support for B. and C. is at \$1,290 per month effective July 1, 2010.
2. Mr. A. is liable for child support arrears for B. and C. in the monthly amount of \$1,290 for the months of March 2009 through June 2010.
3. The Division shall give Mr. A. credits for his direct payments of child support for B. and C. of \$1,104 per month for the months of March 2006 through June 2010, and any other direct payments of child support made prior to June 1, 2010 that he can show that he is entitled to.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for B. and C.

5. All other provisions of the Amended Administrative Child and Medical Support Order issued on January 12, 2010 remain in effect.

DATED this 15th day of June, 2010.

By: Signed
Mark T. Handley
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 July, 2010

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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

¹⁷ Alaska Civil Rule 90.3 Commentary VI.B.2.