

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

IN THE MATTER OF:)

A. W.)

) OAH No. 10-0146-CSS

) CSSD No. 001148922

DECISION AND ORDER

I. Introduction

This case involves the obligor A. W.’ appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 16, 2010. The Obligee child is J., 6 years of age. The custodial parent is K. J. P.

The formal hearing was held on April 19, 2010. Mr. W. appeared in person; the custodian appeared by telephone and is represented by M. V. M., who appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 30, 2010.

Based on the record as a whole and after careful consideration, Mr. W.’ appeal is granted in part and denied in part. He is entitled to a deduction from income for paying support for his prior child L. pursuant to a New York support order and on that basis his child support is modified to \$681 per month, effective October 1, 2009.

Mr. W. is not entitled to a deduction for paying support for his prior children living in No Name Country. Mr. W. does have an order from 2003 to pay support for X., but he has only made arrears payments on it. As to A. and D., Mr. W. has not proven that valid support orders exist for either of these two children, so the small payments he has made to their mothers cannot be deducted from his income for his child support calculation for J.

II. Facts

A. History

Mr. W.’ child support obligation for J. was set at \$546 per month in August 2008.¹ On September 11, 2009, Mr. W. requested a modification review. On September 28, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the case parties.²

¹ Exh. 1.

² Exh. 3.

Mr. W. provided financial information.³ On March 16, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. W.' ongoing child support to \$753 per month, effective October 1, 2009.⁴ He appealed on March 22, 2010, asserting he pays child support for an older child, L., in New York and for his older children in No Name Country, X. and A.⁵

B. Material Facts

The parties are divorced and have one child, J., who is 6 years old. She lives out of state with Ms. P. Mr. W. has four other children, all of them older than J.: X., 16; D., 14; L., 11; and A., 7.⁶

Mr. W.' son, L., lives in New York with his mother, V. J. On September 8, 2009, the Family Court of the State of New York ordered Mr. W. to pay support for L. in the amount of \$181.01 semi-monthly, or \$362.02 per month in ongoing child support.⁷ As of June 10, 2010, he was substantially in compliance with the New York order, as he had paid \$4,344.02 since September 18, 2009, and was in arrears only \$35.10.⁸

The obligor's three other children all live in his home country of No Name. On March 20, 2003, Mr. W. was ordered to pay support for X. to her mother, C. J., in the amount of \$100 per month,⁹ which equals \$37.04 US.¹⁰ As of October 2007, Mr. W. had arrears of \$3,234.50 XCD in that case.¹¹ Mr. W. made two payments totaling \$2,500 XCD on behalf of X., but both

³ Exhs. 4-5.

⁴ Exh. 6.

⁵ Exh. 7.

⁶ K.s mother is C. J.; D.'s mother is D. P.; and A.'s mother is C. G. Exh. A at pgs. 10-13.

⁷ Exh. 5 at pgs. 6-9.

⁸ Exh. C at pgs. 5-7. Another document Mr. W. submitted seems to indicate that the New York order amount has been changed to \$165.72 semi-monthly, or \$331.44 per month, but there is no evidence of an actual modification. The document Mr. W. submitted is merely a summary of Mr. W.' support obligation from New York's Office of Child Support Enforcement. Exh. C at pg. 7.

⁹ Exh. 8. This document was originally filed as Exhibit 17 in Mr. W.' 2008 appeal, when this support obligation was established. See *In the Matter of A. W.*, OAH No. 08-0096-CSS (August 25, 2008). Here, Ms. P.'s attorney brought it to the tribunal's attention and subsequently filed a copy labeled Custodial Parent's Exhibit 1, but with the original Exhibit 17 stamp showing. However, CSSD apparently covered up the Exhibit 17 mark and re-labeled it as Exhibit 8. Even so, one can verify that Exhibit 8 is a copy of the original Exhibit 17 filed in 2008 because the date stamp showing it was received by CSSD on November 14, 2007, is identical on both documents.

¹⁰ No Name Country's currency is the East Caribbean dollar (XCD); the exchange rate has been \$2.7 XCD per \$1 US since at least 2003. <https://www.cia.gov/library/publications/the-world-factbook/geos/gj.html>. Thus, a No Name Country child support order of \$100 XCD per month would equal \$37.04 US ($\$100 \div 2.7 = \37.04).

¹¹ Exh. 8.

of them were made prior to October 1, 2009,¹² the effective date of this modification. Because of the large arrears that had accumulated in X.'s case, those payments more likely than not were made against the arrears, not the ongoing support amount.

Mr. W. has also paid support since October 1, 2009, for two other children who live in No Name Country. He submitted copies of receipts from MoneyGram Int., that show he paid D. P. a total of \$400 US for D. during the period from October 1, 2009, through April 7, 2010,¹³ an average of \$57.14 per month.¹⁴ Similarly, Mr. W. paid C. G. a total of \$475 US for A. during the same period,¹⁵ an average of \$67.86 per month.¹⁶

III. Discussion

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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. The modification is effective beginning the month after the parties are served with notice, so this modification is effective as of October 1, 2009.¹⁸

Civil Rule 90.3 provides for deductions from income for parents who pay support for children from prior relationships or support them in the home. If the parent pays support for a prior child, that amount is deducted from the parent's income in the child support calculation for the younger child at issue. This provision of the rule requires that the child support payments must be ordered by a court or administrative agency and must actually be paid.¹⁹

The primary issue in this appeal is whether Mr. W. is entitled to a deduction for the child support he pays on behalf of his prior children. There is currently no dispute that Mr. W. is entitled to a deduction of \$362 per month for the support he pays for L. in New York. After the

¹² Exh. A at pg. 19.

¹³ Exh. A at pgs. 7, 14-18.

¹⁴ $\$400 \div 7 \text{ months} = \57.14 per month.

¹⁵ *Id.*

¹⁶ $\$475 \div 7 \text{ months} = \67.86 per month.

¹⁷ AS 25.27.190(e).

¹⁸ 15 AAC 125.321(d). In this case, the notice was issued on September 28, 2009. Exh. 3.

¹⁹ Civil Rule 90.3(a)(1)(C).

hearing, CSSD submitted a revised calculation that incorporates this additional deduction, and it results in a child support amount of \$681 per month for J.²⁰

A. *Mr. W.’ Child Support Orders*

Both CSSD and the custodian remain opposed to Mr. W. being granted any deduction for paying support for his children who reside in No Name Country. They challenge the authenticity of the evidence Mr. W. filed in support of his claim he pays support for X., D. and A. Three documents are at issue: Exhibit 8,²¹ Exhibit 5, page 1, and Exhibit D.

1. Exhibit 8

Mr. W. originally filed Exhibit 8 in connection with his 2008 appeal. It is a letter written on preprinted letterhead with a coat of arms at the top of the page and dated November 2, 2007. Written by J. S., Magistrate of the Eastern District in No Name Country, the letter certifies that the “maintenance suit” filed by C. J. against Mr. W. was heard on March 20, 2003, by Magistrate H. P. of the Eastern District, who ordered Mr. W. to pay support for X. in the amount of \$100 XCD per month beginning on March 31, 2003.²² The letter also certifies that Mr. W. was in arrears totaling \$3,234.50 XCD through October 31, 2007.²³ The validity of Exhibit 8 was not disputed in the 2008 appeal, nor has it been challenged here. It does establish that Mr. W. had a preexisting order to pay support for X., the oldest of his prior children.

2. Exhibit 5, Page 1

The second document at issue is found at Exhibit 5, page 1. This document is not a letter; rather, it purports to be a copy of an order from the Eastern District Magistrate’s Court in the support action filed by C. J. against Mr. W. It states that the matter was heard on March 20, 2003, by Magistrate H. P., who ordered Mr. W. to pay support of \$350 per month “to C. J. for C. J., . . . to C. G. for A. G., . . . [and] to D. P. for D. P.,” commencing on or before March 31, 2003. This document is on plain paper, not letterhead, and it does not have a coat of arms; all of the printing could have been produced by a standard typewriter. It does have a seal and Magistrate P.’s signature, but the signature is not dated.

²⁰ Exh. 10.

²¹ See n.9. Because of the critical nature of these documents and also to aid the reader, a copy of each one has been attached to this decision.

²² Exh. 8.

²³ *Id.*

3. Exhibit D

The third document at issue is the obligor's Exhibit D, which consists of three separate one-page documents filed on July 9, 2010. Each page is on preprinted letterhead with a coat of arms, the same as Magistrate S.' letter at Exhibit 8. Page 1 of Exhibit D purports to be an order made on September 4, 2003, for Mr. W. to pay C. G. \$350 XCD per month on behalf of A.. It has a signature, apparently Magistrate P.'s, and his seal, and is dated June 24, 2010.

Pages 2 and 3 of Exhibit D are identical in form and appearance to the first page. Page 2 purports to be an order dated July 10, 1996, for Mr. W. to pay D. P. \$350 XCD per month on behalf of D. Similarly, Page 3 purports to be an order made on March 20, 2003, for Mr. W. to pay C. J. \$350 XCD per month on behalf of X. Pages 2 and 3 both have Magistrate P.'s signature and seal, and are dated June 24, 2010.

B. Analysis of Mr. W.' Child Support Orders

Exhibit 5, page 1 does not establish that Mr. W. has child support orders for X., A. or D. In fact, the document must be rejected in its entirety. It does not provide any authority for Mr. W.' assertion he has orders to pay support for his prior children living in No Name Country. Upon inspection, it is obvious there are problems with the document arising from its appearance – it is not on letterhead, so at a minimum, it cannot be a photocopy of an original document housed at the magistrate's court.

The legal content of Exhibit 5, page 1 is suspect, as well. Significantly, this alleged order lists only C. J. as the complainant, yet it also orders Mr. W. to pay support for A. and D., two other children born of different mothers who are not named as complainants in the proceeding. Finally, but most importantly, Exhibit 5, page 1 orders Mr. W. to pay support of \$350 per month for A. G., the child of C. [sic] G., commencing on or before March 31, 2003. This is simply not possible – a certified copy of A. G.' birth certificate indicates she was born to C. G. on July 16, 2003, almost four months after the effective date of this supposed child support order.²⁴ As stated by Ms. P.'s counsel, "these differences are irreconcilable."²⁵ The discrepancies in these exhibits raise serious concerns about Mr. W.' truthfulness in this proceeding. Ms. P.'s attorney cross-examined him at length about the possible genesis of these documents, but he steadfastly

²⁴ See Exh. A at pg. 19.

²⁵ Custodian's April 23, 2010, Submission to Record and Comments of Counsel at pg. 2.

insisted they were genuine. But the alleged order reflected in Exhibit 5, page 1 cannot be authentic because it contains plainly false information as it pertains to A. G.

Exhibit D also must be rejected. The three pages of Exhibit D actually are the most genuine-appearing documents Mr. W. has filed for this modification. They appear to be copies of orders issued by the Magistrate's Court, Eastern District, regarding each of Mr. W.' prior children in No Name Country. Each order is on letterhead with a coat of arms, and each one has a signature and seal and is dated June 24, 2010. It is possible these three orders are genuine, but significant questions remain, such as why the amount for X. is \$350 per month, commencing March 31, 2003, rather than the \$100 per month amount stated in Exhibit 8. Because of the numerous discrepancies found in Mr. W.' earlier documents, the authenticity of these three "orders" in Exhibit D must be guaranteed before they can be accepted. Thus, in order to have them recognized by CSSD, Mr. W. must submit certified copies of the child support orders entered on behalf of his prior children by the Magistrate's Court in No Name Country. Until he does that, Mr. W. will not be entitled to a deduction for supporting his prior children.

C. Mr. W.' Child Support Payments

To be entitled to a deduction for paying support for prior children, a parent must not only have an order from a court or administrative agency, he or she must actually be paying on that order.²⁶ As discussed in the "Material Facts" section on page 3, it appears that Mr. W. has been paying modest amounts of support to D. P. on behalf of D. and to C. G. on behalf of A. since October 1, 2009.²⁷ Unfortunately, Mr. W. has not been able to establish by a preponderance of the evidence that he has valid child support orders for these two children. As a result, the requirements of Civil Rule 90.3(a)(1)(C) have not been met and Mr. W. is not entitled to a deduction for paying support for D. and A. in this child support action for J..

Mr. W. also claims he pays support for X. He submitted two receipts for payments totaling \$2,500 XCD made on her behalf, one made on August 26, 2009, and the other on September 1, 2009.²⁸ However, both of the payments were made prior to October 1, 2009, the effective date of this modification action, so they cannot be deducted from Mr. W.' income for the purpose of calculating child support in this case.

²⁶ Civil Rule 90.3(a)(1)(C).

²⁷ Exh. A at pgs. 7, 14-18.

²⁸ Exh. A at pg. 19.

Even if the payments were made after October 1, 2009, they cannot be credited to him because they were not for ongoing support. As shown in Exhibit 8, discussed above, Mr. W. had arrears in X.'s case totaling \$3,234.50 XCD, at least through October 31, 2007. He hasn't documented any other payments made in X.'s case prior to these two, so it appears the payments of \$2,500 were made toward Mr. W.'s arrears. He claimed at the hearing that they were "advance payments," for X.'s support, but based on the entire record in this appeal, it is more likely than not the payments were made toward the arrears generated by the 2003 child support order made on X.'s behalf.

IV. Conclusion

Mr. W. met his burden of proving by a preponderance of the evidence that the March 16, 2010, Modified Administrative Child Support and Medical Support Order was incorrect. Mr. W. is entitled to an additional deduction from income in the amount of \$362 per month for paying support for his prior child L. He is not entitled to a deduction for paying support for his prior children living in No Name Country until such time as he provides certified copies of his child support orders from that country. His modified ongoing child support is now correctly calculated at \$681 per month, effective October 1, 2009.

V. Child Support Order

- Mr. W. is liable for modified child support for J. in the amount of \$681 per month, effective October 1, 2009;
- All other provisions of the March 16, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30th day of August, 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 17th day of September, 2010.

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

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