

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

IN THE MATTER OF: )

M. M. B. )

OAH No. 10-0147-CSS

CSSD No. 001061124

**DECISION AND ORDER**

**I. Introduction and Procedural Background**

The obligor, M. M. B., challenged a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 17, 2010. Effective September 1, 2009, this order increased Mr. B.’s monthly child support obligation to \$645 from \$ 442 per month. Mr. B. appealed, arguing that he cannot afford this increase because his income is insufficient to meet household expenses and there are other children in his home. The custodian is C. C. The Obligee child is M., who is 14 years old.

A hearing was held on April 26, 2010. Mr. B. and Ms. C. participated in person; Andrew Rawls, Child Support Specialist, represented CSSD in person. The unchallenged evidence established that Mr. B.’s income for 2010 would be \$46,305.<sup>1</sup> Using this amount, Mr. B.’s child support is modified to \$621 per month for one child, effective September 1, 2009.

**II. Facts**

*A. Background*

Mr. B.’s child support obligation for M. was set at \$442 per month in November 2006.<sup>2</sup> Ms. C.’s request for modification was received by CSSD on August 22, 2009.<sup>3</sup> On August 24, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order requesting current financial information.<sup>4</sup> Mr. B. provided the requested information. On February 17, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B.’s ongoing child support to \$645 per month, effective September 1,

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<sup>1</sup> \$45,000 Annual Wages + PFD.

<sup>2</sup> Exh. 1 (effective August 1, 2006).

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

2009.<sup>5</sup> CSSD based their calculation on Mr. B.'s 2009 earnings as reported by the Alaska Department of Labor plus the 2009 Permanent Fund Dividend (PFD). These amounts resulted in a child support calculation based on \$48,398.05 in gross income.<sup>6</sup>

Mr. B. appealed on March 22, 2010 requesting a hardship variance.<sup>7</sup> He asserts that his income has changed and CSSD did not take into account the children he supports in his home.<sup>8</sup>

*B. Material Facts*

Mr. B. is employed by No Name Inc. He does not dispute his reported earnings for 2009. The unchallenged testimony at hearing established that 2009 wages were earned on an hourly basis and included overtime. He is now salaried and earns approximately \$45,000 per year.<sup>9</sup>

Mr. B. lives with T. L. and their two children: N., age 9 years and D., age 6 years. Ms. L. is employed earning \$42,355.30 per year.<sup>10</sup> In 2010, excluding Permanent Fund Dividends, their combined earnings are expected to be \$87,335.30.

Mr. B. reported regular monthly expenses of \$1,376.47<sup>11</sup> for the mortgage; \$380 for food; \$197 for electricity and gas; \$80 for telephone and internet; \$200 for a cell phone; \$140 for water and trash; \$426 for vehicle gasoline and maintenance; \$453.91<sup>12</sup> for vehicle insurance; \$451 for health insurance;<sup>13</sup> \$731.08 for two vehicles; \$330 for entertainment and personal care items including tobacco; and \$570 for consumer debt.<sup>14</sup> Mr. B.'s monthly expenses total \$5,305.46 per month.

Ms. C. lives with M. She reported regular monthly expenses of \$1,000 for the mortgage; \$500 for food; \$124.99 for electricity and gas; \$105.82 for telephone and internet; \$95.88 for a cell phone; \$176 for condo dues that includes water, trash, and waste water; \$192 for vehicle gas;

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<sup>5</sup> Exh. 4. The effective date of a modification is the first month after CSSD issues the notice that a petition for modification has been filed. 15 AAC 125.321(d).

<sup>6</sup> Exh. 5 at 6; Exh. 8.

<sup>7</sup> Although not phrased as such, Mr. B. claims that he cannot afford the increase in child support and he has several children in the house.

<sup>8</sup> Exh. 6.

<sup>9</sup> Exh. 11.

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

<sup>11</sup> This includes home insurance. Exh. 10.

<sup>12</sup> This is reported as the amount paid per month. Exh 10; Exh 12 at 1.

<sup>13</sup> M. is not covered by Mr. B.'s health insurance.

<sup>14</sup> Exh. 10; Exh. 12.

\$21.92 for vehicle insurance; \$200 for entertainment and personal care items.<sup>15</sup> Ms. C.'s regular monthly expenses total \$2,416.61 per month. She expects to earn \$51,000 in 2010.

### **III. Discussion**

Mr. B. has requested a hardship variance. Before his request can be considered it must be determined what his gross income and monthly child support obligation would be without a variance for the period in question. It is from this starting point that Mr. B.'s request for hardship will be analyzed.

#### *A. Income for Purposes of Child Support Calculations.*

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>16</sup> If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and the support amount may be modified.<sup>17</sup> A parent is obligated both by statute and at common law to support his or her children.<sup>18</sup>

When calculating child support, the obligor's annual gross income must be established. Typically, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Mr. B. has presented his most recent pay stub evidencing that he earns \$3,750 per month or \$45,000 per year. Neither CSSD nor Ms. C. have challenged Mr. B.'s testimony that in 2010 he is anticipated to earn \$45,000. Therefore, Mr. B. has established by a preponderance of the evidence that CSSD overstated his expected 2010 earnings.

When recalculated using Mr. B.'s updated actual income for 2010 plus the PFD, his monthly child support obligation is \$621.<sup>19</sup> This amount is more than 15% higher than his prior obligation so modification is appropriate. Therefore, effective September 1, 2009, Mr. B.'s monthly child support should be \$621 for one child.

#### *B. Mr. B. Did Not Establish Manifest Injustice Would Result If The Support Award Were Not Varied.*

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<sup>15</sup> Exh. 9.

<sup>16</sup> AS 25.27.190(e).

<sup>17</sup> Civil Rule 90.3(h).

<sup>18</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>19</sup> Attachment A.

A 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.”<sup>20</sup> 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>[21]</sup>

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).<sup>22</sup>

In 2010, Mr. B. is on track to earn \$46,305.00<sup>23</sup> for a monthly adjusted gross income of \$3,106.05.<sup>24</sup> His monthly expenses are \$5,305.46. Mr. B.’s monthly expenses exceed his monthly income by \$2,119.41.

Mr. B. argues that his subsequent children living in the home should be considered good cause to vary his child support obligation calculated in accordance with Civil Rule 90.3. However, subsequent children are not considered for purposes of calculating child support unless the obligor can establish that failure to vary the child support will cause a substantial hardship to the subsequent children.<sup>25</sup> Moreover, the commentary to Civil Rule 90.3 provides that when considering whether substantial hardship to subsequent children exists it is appropriate to consider the income of both parents of the subsequent children.<sup>26</sup> Here the combined monthly gross income of both parents of the subsequent children for 2010 will, more likely than not, be \$89,965.30.<sup>27</sup> After taxes and other mandatory deductions, this results in an adjusted monthly

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<sup>20</sup> Civil Rule 90.3(c).

<sup>21</sup> Civil Rule 90.3(c)(1).

<sup>22</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>23</sup> \$45,000(wages) + \$1,305(PFD) = \$46,305

<sup>24</sup> \$3,106.05 = (\$46,305/12) - \$452.19 [Fed. Income Tax] - \$286.88 [FICA] – 13.63 [Unemployment]. This is calculated using CSSD’s online child support calculator found at <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>.

<sup>25</sup> 15 AAC 125.075(a)(2)(F); See Civil Rule 90.3, Commentary VI.B.2.

<sup>26</sup> Civil Rule 90.3, Commentary VI.B.2.

<sup>27</sup> \$89,965.30 = \$45,000 + \$42,355.30 + \$1,305 + \$1,305.

income of \$5,564.81.<sup>28</sup> This exceeds Mr. B.'s monthly expenses by \$259.35. When Mr. B.'s child support payment is considered the monthly expenses exceeds his monthly income.

Because of this discrepancy Mr. B. believes he is incapable of meeting the child support obligation without causing a hardship to his present children. He has a significant amount of debt, but higher monthly living expenses or debts do not automatically entitle him to a reduction in the child support calculation. Mr. B. may have to make difficult budgeting decisions in light of his child support obligation.

While the custodian's income exceeds her monthly expenses and Ms. C. testified she could get by on less child support, Mr. B.'s situation does not warrant shifting his burden of support to the custodian. To lower the child support amount would in essence mean that M. is financing Mr. B.'s household and financial decisions, which is an unfair result for the child. A person who has brought a child into the world does not have the freedom to make life choices that deprive the child of support.<sup>29</sup> By reducing just some of his consumer debt, in particular his truck payment and credit card payments, Mr. B. could afford the increase in his support obligation. But even if his living expenses exceed his net income, Mr. B.'s child support should not be lowered. He has a duty to support M., and this duty takes priority over other debts and obligations. M. is entitled to receive child support in an amount commensurate with Mr. B.'s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. B.'s financial situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated under the Rule should be lowered.

Therefore, based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. B. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for M.

#### **IV. Conclusion**

Mr. B. did establish by a preponderance of the evidence that the gross income figures used by CSSD were incorrect. When correctly calculated, Mr. B.'s child support should be modified to \$621 per month effective September 1, 2009. He has not met his burden of proving

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<sup>28</sup> \$5,564.81 = (\$89,965.30/12) - \$1,361.78 [Fed. Income Tax] - \$556.89 [FICA] - \$13.63 [Unemployment]

<sup>29</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied.

**V. Child Support Order**

- The obligor's child support is modified to \$621 per month effective September 1, 2009.
- All other provisions of CSSD's February 17, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 3<sup>rd</sup> day of May, 2010.

By: Signed

Rebecca L. Pauli  
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 21<sup>st</sup> day of May, 2010.

By: Signed

Signature

Christopher Kennedy

Name

Deputy Chief Administrative Law Judge

Title

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