

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

IN THE MATTER OF: )

B. A. G. )

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) OAH No. 10-0195-CSS

) CSSD No. 001141357

**DECISION AND ORDER**

**I. Introduction and Procedural Background**

The Obligor, B. A. G., challenged a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 23, 2010. Effective January 1, 2010, this order increased Mr. G.’s monthly child support obligation to \$748 from \$650 per month. Mr. G. appealed, arguing that CSSD failed to include child support paid for a prior child. The Custodian is P. L. W.-G. The Obligee children are M. who is 14 years old and C. who is 12 years old.

A hearing was held on May 6, 2010. Mr. G. participated by phone; Ms. W.-G. participated in person; and Andrew Rawls, Child Support Specialist, represented CSSD in person. At the hearing CSSD proposed a new calculation including a deduction for child support paid for a prior child. The proposed figure, \$580, did not meet the presumptive threshold for modification. Ms. W.-G. did not agree and requested a variance to increase the amount of support owing. However, when the income and expenses of both households are considered, Ms. W.-G. did not establish that there exist unusual circumstances sufficient to support an upward variance. Thus, Mr. G.’s monthly child support remains at \$650 per month for two children, as set in July 2007.

**II. Facts**

*A. Background*

Mr. G.’s child support obligation for M. and C. was set at \$650 per month in July 2007.<sup>1</sup> Mr. G.’s request for modification was received by CSSD on December 29, 2009.<sup>2</sup> On December 30, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support

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

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

Order requesting current financial information.<sup>3</sup> Mr. G. provided the requested information.<sup>4</sup> On February 17, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. G.'s ongoing child support to \$748 per month, effective January 1, 2010.<sup>5</sup> Mr. G. timely appealed noting that CSSD failed to include a deduction for child support paid for the support of a prior child.<sup>6</sup> When a deduction for child support paid for a prior child is considered, Mr. G.'s monthly child support obligation for two children is \$580 per month.<sup>7</sup> This is less than a 15% change from the prior monthly child support.

*B. Material Facts*

Mr. G. does not dispute the gross income figure used to calculate his child support obligation. Nor does he dispute that when the deduction for child support for a prior child is included in the calculation the new amount does not support modification and that his monthly child support obligation should remain at \$650 per month.<sup>8</sup> The prior child is Mr. G.'s biological child. He adopted M. and C. in April 2004, after his biological child was born.

Mr. G. moved from Alaska in 2008. When he moved, he cashed out his retirement account netting \$31,205.45. He testified that he spent all of this moving to Oregon and establishing a new life there. He is employed as a network analyst and expects to earn \$44,920 in 2010. He lives with another adult, age 27. Mr. G. supports this adult. The roommate does not work and does not contribute to household expenses. Mr. G. testified that he has regular monthly expenses for him and his roommate of \$725 for the rent; \$300 for food; \$100 for electricity; \$108 for phone and internet; \$80 for vehicle gasoline and maintenance; \$77.32 for vehicle insurance; \$421.37 for his vehicle; \$55 for personal care items; \$137.95 for consumer debt; and \$55 for outstanding medical debt. The medical debt should be paid off in three to four months. He also has over \$3,000 in consumer debt which he does not pay.

Ms. W.-G. lives in Homer, Alaska with her two children. She is on Social Security Disability and is unable to work. In addition to Social Security she receives rent subsidy, food

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

<sup>4</sup> Exh. 4

<sup>5</sup> Exh. 5. 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. 6.

<sup>7</sup> Exh. 6; Exh. 7.

<sup>8</sup> G. Testimony.

stamps and other public assistance. Excluding her rent subsidy her monthly income is \$1,796.<sup>9</sup> Her monthly expenses are: \$179 for rent; \$550 for food; \$124.45 for water, sewer and garbage; \$413.72 for electricity, heating oil, and propane; \$195.74 for internet and cable; \$235.16 for cell phones; \$46.65 for vehicle insurance; \$60 for vehicle gas; and \$150 for personal items. She also has medical debt which she tries to pay off as she can, typically at \$5 – \$20 per month. Ms. W.-G. testified that because her expenses exceed her income she relies upon her mother to help make ends meet. Ms. W.-G. estimated she owes her mother \$5,700. She also has \$400 in consumer debt which she is not paying. Finally, Ms. W.-G. testified regarding the need to provide surgery and braces for the children and monthly medications that are not covered by Medicaid.

### **III. Discussion**

Mr. G. appealed the modification of his child support obligation because he believed CSSD had overstated his adjusted annual income for purposes of calculating child support. Ms. W.-G. has requested the child support amount be varied and increased. Before her request can be considered it must be determined what Mr. G.'s gross income and monthly child support obligation would be without a variance. It is from this starting point that her request for a variance will be analyzed.

#### *A. Child Support As Calculated Pursuant To Civil Rule 90.3(a).*

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”<sup>10</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>11</sup> A parent is obligated both by statute and at common law to support his or her children.<sup>12</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. Neither CSSD nor Ms. W.-G. challenge Mr. G.'s

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<sup>9</sup> This amount includes the dollar value of the food stamps received. Exh. 8.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> Civil Rule 90.3(h).

<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

testimony that in 2010 he is anticipated to earn \$44,920 or that he pays support for another child in the amount of \$622 per month.

Under Civil Rule 90.3(a)(1)(C) child support for a prior child which is actually paid qualifies as a deduction for purposes of calculating a parent's adjusted annual income for child support. Mr. G. sought a deduction for his biological child who was born before Mr. G. adopted M. and C. The child is younger than M. and older than C., so it would appear to be a prior child only as to C. but not M. However, Civil Rule 90.3 addresses this situation by stating that to qualify for the deduction, the child has to be from a "prior relationship."<sup>13</sup> Since Mr. G. adopted M. and C. after his biological child was born, the child is a prior child under Civil Rule 90.3(a)(1)(C) and he is entitled to the deduction. CSSD's original calculation did not include this deduction. Therefore, Mr. G. has established by a preponderance of the evidence that when CSSD issued its Modified Administrative Child Support and Medical Support Order on March 23, 2010, the adjusted gross income was overstated.

When recalculated using Civil Rule 90.3(a), Mr. G.'s monthly child support obligation is \$580 per month for two children.<sup>14</sup> This amount is less than the \$650 per month payment established in 2007. However, it is not more than a 15% change from his prior obligation so a material change in circumstances is not presumed. Mr. G. has not argued that the record otherwise would support a finding of "good cause and material change in circumstances."

*B. Ms. W.-G. Did Not Establish Manifest Injustice Would Result If The Support Award Were Not Varied.*

A parent may obtain a reduction or increase in the amount calculated, but only if he or she shows that "good cause" exists to vary the amount calculated. 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>15</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

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<sup>13</sup> Civil Rule 90.3, Commentary III.D.

<sup>14</sup> Exh.7.

<sup>15</sup> Civil Rule 90.3(c).

amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .<sup>[16]</sup>

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee children 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>17</sup>

Ms. W.-G.'s monthly expenses exceed her monthly income by at least \$157.72.<sup>18</sup> She convincingly testified regarding medical expenses that exist but she could not quantify them or they have not yet been incurred. Therefore, these expenses are not included in the analysis.

In 2010, Mr. G. is on track to earn \$44,290 for a monthly adjusted gross income of \$2,146.89.<sup>19</sup> His monthly expenses are \$2,004.64. This amount does not include the \$55 per month he pays on the medical bill because it will be paid off in the near future. Mr. G.'s monthly income exceeds his monthly expenses by \$142.25. However, once his child support obligation is considered, Mr. G.'s expenses will exceed his income by \$507.75. While his child support obligation will strain his finances, he could ease the strain by insisting that his roommate contribute to household expenses.

The evidence supports a finding that Ms. W.-G. could benefit from additional financial support for the children. However, when the circumstances of both households are considered one cannot say manifest injustice would result if the child support were not varied. Viewed another way, when calculated pursuant to Civil Rule 90.3(a), Mr. G.'s monthly child support obligation would be \$70 less than the \$650 he is ordered to pay but because the change is less than 15% a modification is not warranted. Had the change been 15% or more and his child support obligation been modified downward, it may have been that a variance would have been appropriate. However, under the totality of the circumstances, Mr. G.'s child support should remain at \$650 per month.<sup>20</sup>

Therefore, based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. There are no "unusual circumstances" present to warrant granting an upward variance.

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<sup>16</sup> Civil Rule 90.3(c)(1).

<sup>17</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>18</sup> \$1,953.72 - \$1,796 = \$157.72.

<sup>19</sup> Exh. 7.

<sup>20</sup> Whether the child support obligation should be varied from \$580 per month is not at issue and no finding of fact regarding the appropriateness of a variance under the facts presented is made.

**IV. Conclusion**

Mr. G. did establish by a preponderance of the evidence that the adjusted gross income figure used by CSSD was incorrect. However, there has not been a showing of a material change in circumstances that warrants a decrease from the prior child support amount. Ms. W.-G. has not met her burden of proving by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Therefore, Mr. G.'s child support should remain at \$650 per month.

**V. Child Support Order**

- B. A. G.'s support obligation for two children remains \$650 per month, as set in July 2007.
- All other provisions of the Modified Administrative Child Support and Medical Support Order issued March 23, 2010, remain in full force and effect.

DATED this 13<sup>th</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 1<sup>st</sup> day of June, 2010.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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