

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

IN THE MATTER OF:)

S. Z. T.)

) OAH No. 10-0202-CSS
) CSSD No. 001115557
)

DECISION AND ORDER

I. Introduction

S. T., the obligor, had a support obligation for one child in the amount of \$404 per month.¹ The child in this case is A. T., who is 11 years old. The custodial parent, M. R., requested a modification of that award.² Notice of Ms. R.' request was mailed on October 14, 2009.³ The Child Support Services Division (CSSD) granted the request and modified Mr. T.'s obligation to \$625 per month, effective November 1, 2009. A hearing was held on May 10, 2010. Ms. R. appeared by phone. The Division was represented by Erinn Brian. Mr. T. did not appear.

Pursuant to 15 AAC 05.030(j), the record was kept open for ten days to provide Mr. T. an opportunity to show reasonable cause for his failure to appear. Mr. T. subsequently submitted a letter stating that he had not received the notice of the hearing date. A second hearing was granted and held on May 27, 2010.

At the second hearing CSSD was represented in person by Child Support Specialist Andrew Rawls. Mr. T. appeared in person and Ms. R. appeared by phone. Based on the testimony and other evidence in this case, CSSD's modification order of March 15, 2010 is affirmed.

II. Facts

A. Background

CSSD set Mr. T's ongoing child support at \$404 per month on January 11, 2005.⁴ This order allowed a monthly medical credit of \$90.87 per month, resulting in a net obligation of \$313

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3, page 4.
⁴ Exhibit 1.

per month.⁵ On October 13, 2009, Ms. R. requested a modification of the January 2005 order.⁶ A Notice of Petition for Modification of Administrative Support Order was issued on October 14, 2009.⁷ On March 15, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order setting an ongoing child support obligation of \$625 per month.⁸ This order did not provide for a medical credit.⁹ Mr. T. appealed CSSD's decision.¹⁰ His appeal states that "after calculating my monthly bills and living expenses, there is no way that I can afford \$625 a month."¹¹

B. Material Facts

Mr. T. works as an Accessories Technician at No Name Service.¹² He earned \$45,373.50 from this employment in 2009.¹³ After adding in a Permanent Fund Dividend check, and after subtracting taxes, Mr. T. has an adjusted annual income of \$37,524.18.¹⁴ Based on CSSD's online child support calculator, this income figure results in a support amount of \$625 per month.¹⁵

Mr. T. estimated that he spends \$300 to \$350 per month for food in his home, and another \$200 a month for lunch at work. His current rent is low, paying only \$250 per month to live with friends.¹⁶ He pays \$98 per month for his cellular phone service.

Mr. T. owns a 2005 Cadillac Escalade. He owes over \$25,000 on this vehicle, and his payments are \$511 per month. Mr. T. also owns a 1964 Cadillac which is paid for. He spends about \$380 per month on gasoline, and about \$30 per month on vehicle maintenance. His other monthly expenses include \$230 for insurance, \$200 for entertainment, \$200 for personal care, \$100 for alcoholic beverages, and \$160 for storage. He also owes \$4,000 for a past medical bill and is paying \$100 per month on that.

⁵ Exhibit 1, page 7.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 4.

⁹ Exhibit 4, page 6.

¹⁰ Exhibit 5.

¹¹ Exhibit 5.

¹² The facts found in this matter are based on Mr. T.'s testimony unless otherwise noted.

¹³ Exhibit 6.

¹⁴ Exhibit 4, page 6.

¹⁵ Exhibit 4, page 6. The online calculator is available at www.csed.state.ak.us.

¹⁶ This situation may end soon, and he will likely have to pay more in rent, even if he shares an apartment with one or more roommates.

Ms. R. testified that she lives with her husband and four children, including A. The children range in age from 1 year old to 11 years old. Her husband's net pay is about \$2,000 per month. She is not employed, and will be going to school in the fall. The household's total expenses exceed her husband's net income by about \$500 per month.

III. Discussion

Child support obligations are calculated pursuant to Civil Rule 90.3. Usually, the support obligation for one child will be 20% of the obligor parent's adjusted income.¹⁷ This amount can be varied

for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.

* * *

Good cause may include a finding that unusual circumstances exist which require variation of the award in order award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children.^[18]

At the beginning of the hearing, the parents stated that they had reached an agreement that Mr. T.'s support should be set at \$500 per month. Ms. R. later testified that she thought \$625 per month would be reasonable but that a downward adjustment was appropriate because Mr. T. is also paying an additional amount for child support arrears. An agreement of the parents is not, by itself, sufficient to create an exception to the normal child support calculation, which is based on the noncustodial parent's income.¹⁹

Mr. T.'s current living expenses are high relative to his net income. Other than his vehicle, his consumer debt is relatively low. He will have to make some difficult financial decisions in order to support his daughter, but he has not shown by clear and convincing evidence that it would be manifestly unjust to set his support award at \$625 per month.²⁰ This is especially true when comparing his situation to Ms. R.' household. A reduction in support from Mr. T. would negatively affect that household's ability to provide for A.

¹⁷ Civil Rule 90.3(a)(2).

¹⁸ Civil Rule 90.3(c)(1)

¹⁹ Civil Rule 90.3, Commentary VI.B.1.

²⁰ Temporarily working overtime or a second, part time job may be one possible way to help pay the child support arrears. *See* Civil Rule 90.3, Commentary VI.B.9.

IV. Conclusion

CSSD correctly calculated Mr. T.'s support obligation under Civil Rule 90.3. Mr. T. has not shown by clear and convincing evidence that an award of this amount would result in manifest injustice. Accordingly, CSSD's modified order should be affirmed.

V. Child Support Order

- CSSD's Modified Administrative Child Support and Medical Support Order dated March 15, 2010 is affirmed.

DATED this 8th day of June, 2010.

By: Signed
 Jeffrey A. Friedman
 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 25th day of June, 2010.

By: Signed
 Signature
 Jeffery A. Friedman
 Name
 Administrative Law Judge
 Title

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