

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

IN THE MATTER OF:)
)
S. W. T.) OAH No. 10-0204-CSS
) CSSD No. 001155349
_____)

DECISION AND ORDER

I. Introduction

The Obligor, S. W. T., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 16, 2010. The Obligee child is R. W., who is 15 years old. L. W. is the custodian of record.

The hearing was held on May 13, 2010. Both Mr. T. and Ms. W. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The record was held open until May 24, 2010, to allow CSSD to submit additional support calculations.

Based on the record, and after due deliberation, Mr. T.'s child support is modified and set as discussed below.

II. Facts

A. Background

Mr. T.'s child support obligation was set at \$177 per month effective March 1, 2001.¹ Ms. W. submitted a Request for Modification, which was received by CSSD on September 28, 2009.² CSSD mailed the Notice of Petition for Modification to Mr. T. on September 29, 2009.³ On March 16, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order setting Mr. T.'s ongoing child support obligation at \$426 per month effective October 1, 2009.⁴

Mr. T. appealed the modified support order on March 30, 2010.⁵ His appeal states 1) that the income relied on by CSSD in modifying the support does not reflect his current income and

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3, page 4.
⁴ Exhibit 5.
⁵ Exhibit 6.

2) that the increased support obligation would cause extreme hardship. Mr. T. also appealed a \$1,494.00 increase to the amount of his child support arrears.

*B. Material Facts*⁶

Mr. T. currently works full time earning \$14.00 per hour. During the last few months of 2009, however, he held a second job that paid \$11.00 per hour. Because of his second job, his total income for 2009 was \$31,037.⁷

Mr. T. testified that his employer also operated a restaurant. When a cook quit, Mr. T. was asked to fill in on a temporary basis. He did this additional work as a favor for his boss, and has not worked this second job since the end of 2009.

Mr. T. currently lives with his girlfriend, and they share expenses. His girlfriend works full time earning \$16.00 per hour. Mr. T.'s share of expenses includes \$332.50 for rent, \$25.00 per month for Internet access, \$50.00 per month for cellular phone service, and roughly \$50 per month for electricity.⁸

Mr. T.'s share of the food costs are about \$150.00 per month and he occasionally eats meals out, spending about \$35.00 to \$40.00 per month. He is paying \$264.00 per month for a 2007 Harley Sportster motorcycle and also owns a 1993 Oldsmobile Cutless. He does not owe any money on the Cutless. His other expenses for personal items, entertainment, vehicles, insurance, credit card debt, and student loan debt total about \$600.00 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ 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."¹⁰ 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. If the 15% change has not been met, CSSD may modify the child support obligation, but is not

⁶ These facts are based on Mr. S.'s testimony unless otherwise noted.

⁷ Exhibit 8.

⁸ He testified that the most recent electric bill was \$75.00 and that it can be as high as \$125.00. Mr. S. pays for half of that amount.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹¹

Mr. T. does not contest his obligation to pay child support. Nor does he dispute that the amount should be increased based on his current income. His adjusted annual income for 2009 was \$25,827.08.¹² This results in a child support obligation of \$430.00 per month for one child.¹³ This is more than 15% greater than the previous support obligation of \$177 per month, so there is a material change in circumstances justifying this modification.

Mr. T.'s income in 2009 does not, however, reflect his income in 2010. His temporary job has ended so his 2010 adjusted annual income is expected to be \$24,344.36.¹⁴ Pursuant to Civil Rule 90.3, this results in a child support obligation of \$406.¹⁵ While the \$406 per month amount does not vary by 15% from the \$430 per month award, it is more than 15% greater than the \$177 per month award that is being modified. There is a material change in circumstances to modify the prior child support award. In making that modification it is appropriate to set a short term award based on the period of time that Mr. T. held his second job, and then set an ongoing amount based on the amount he is expected to earn in the future.¹⁶

Mr. T. also claimed that paying this much of an increase would create a financial hardship. A parent may obtain a reduction in the amount that would otherwise be awarded pursuant to Civil Rule 90.3(a), 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."¹⁷ 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

¹¹ 15 AAC 125.321(d).

¹² Exhibit 7. The original calculation by CSSD assumed a \$10 per month deduction for union dues. Exhibit 5, page 6. Mr. S. testified at the hearing that he does not pay union dues.

¹³ Civil Rule 90.3(a)(2)(A).

¹⁴ Exhibit 8.

¹⁵ Civil Rule 90.3(a)(2)(A).

¹⁶ Civil Rule 90.3 Commentary, II. E.

¹⁷ Civil Rule 90.3(c).

just and proper for the parties to contribute toward the nurture and education of their children^[18]

It is appropriate to consider all relevant evidence 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).¹⁹

Mr. T. has not proven unusual circumstances sufficient to vary the support award. Whether looked at individually, or as a family unit with his girlfriend, Mr. T. has sufficient net income to cover his monthly expenses, pay the modified child support amount, and make payments towards the child support arrears.²⁰

Finally, Mr. T. questioned the \$1,494 increase to his child support arrears. There was only minimal testimony regarding this increase. If the arrears occurred based on the 2001 support order of \$177 per month, that amount cannot be addressed in this appeal. If, as it appears to be the case,²¹ the arrears are based on the modified order effective October 1, 2009, then the amount in arrears will be adjusted by CSSD based on this order.

IV. Conclusion

Mr. T. has not shown unusual circumstances sufficient to depart from the child support guidelines in Civil Rule 90.3. His child support should be modified to \$430 per month effective October 1, 2009, and then further modified to \$406 per month effective January 1, 2010.

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¹⁸ Civil Rule 90.3(c)(1).

¹⁹ See Civil Rule 90.3, Commentary VI.E.1.

²⁰ Mr. S. did not stress the hardship issue during the hearing. This issue is addressed here because it was stated in his appeal request, but Mr. S. focused most of his efforts during the appeal on asking that the award be set on his current income rather than the temporarily increased income for 2009.

²¹ The difference between the \$177 per month support order and the proposed \$426 per month support order is \$249. \$249 per month for six months amounts to \$1,494.

V. Child Support Order

- Mr. T. is liable for a modified child support in the amount of \$430 per month, effective October 1, 2009 through December 31, 2009.
- Mr. T. is liable for modified ongoing child support in the amount of \$406 per month, effective January 1, 2010.
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order of March 16, 2010 remain in full force and effect.

DATED this 24th day of May, 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 21st day of June, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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