

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

IN THE MATTER OF: )  
 )  
 M. A. V. ) OAH No. 10-0292-CSS  
 ) CSSD No. 001008484  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The Obligor, M. A. V., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on May 17, 2010.<sup>1</sup> This order increased Ms. V.'s support obligation from \$206 to \$258 per month for one child. The Obligee child is A., who is 14 years of age.<sup>2</sup>

The hearing was held on July 1, 2010 and July 20, 2010. Ms. V. participated in person, the custodian, R. C., Sr., participated by phone. Erinn Brian, Child Support Specialist, appeared for CSSD.

Based on the record as a whole and after careful consideration, Ms. V.'s child support is modified to \$230 per month, effective May 1, 2010. Her claim of financial hardship is granted.

**II. Facts**

*A. History*

Ms. V.'s child support obligation for A. was set at \$206 per month commencing March 2007.<sup>3</sup> CSSD initiated modification of the order on April 1, 2010 and sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> As requested, Ms. V. provided income information.<sup>5</sup> On May 17, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. V.'s modified ongoing child support at \$255 per month, effective May 1, 2010.<sup>6</sup> Ms. V. filed an appeal on May 28, 2010, asserting the modified child

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<sup>1</sup> Exh. 1.

<sup>2</sup> The Order sought to be modified issued April 26, 2007, addressed support for two children, one of whom as since emancipated.

<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exh. 3.

<sup>6</sup> Exh. 4.

support amount is too high and she would not be able to afford to meet her basic needs with the increase in child support.<sup>7</sup> She asked that the support amount be lowered.

*B. Material Facts*

Ms. V. is employed by the No Name Restaurant Inc., as a waitress. She typically works between 30 and 35 hours per week.<sup>8</sup> According to her 2009 tax return her total gross income was \$28,532 (\$19,350 wages + \$7,877 unemployment benefits + \$1,305 PFD). Her June 29, 2010 pay stub for the period ending June 27, 2010, reflects year to date gross earnings totaling \$11,350.15 (\$6,272 hourly wages + 5,077.16 reported tips).<sup>9</sup> CSSD averaged the pay checks provided by Ms. V. and extrapolated her anticipated earnings 2010 earnings at \$19,473.68. Including the PFD, CSSD believes Ms. V. will have total income in 2010 earnings totaling \$20,778.68.<sup>10</sup>

Ms. V. lives alone in an apartment she rents for \$675. Electricity had been included in her rent, but she was recently informed that electricity would now be separate with no reduction in rent.<sup>11</sup> Her monthly expenses are minimal, totaling \$1,965.04.<sup>12</sup> In addition to her rent, she has the following monthly expenses: \$450<sup>13</sup> for food; \$70.04 for internet and phone; \$100 for transportation; and \$550 for unspecified personal expenses.<sup>14</sup> She does not know what her monthly electricity bill will be. Ms. V. also testified that she would be entering into a Stipulation to Pay Judgment in Installments obligating her to pay \$100 per month. The total amount owing on the judgment is \$2,000. Finally, she pays \$20 per month on a \$1,000 dental bill.

Mr. C. is presently unemployed. He lives with A. in a rented apartment. Their monthly expenses total \$1,329. They rely upon public services (housing and food stamps) and unemployment (\$248 per week) to make ends meet. After his rent subsidy, Mr. C. pays \$390 per

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<sup>7</sup> Exh. 5.

<sup>8</sup> Exh. 3 & Exh. 7; V. Testimony.

<sup>9</sup> Exh 7.

<sup>10</sup> \$19473.68 + \$1,305.

<sup>11</sup> V. Testimony.

<sup>12</sup> Monthly expense amounts are as testified to by Ms. V.

<sup>13</sup> Ms. V. testified that she spends between \$400 and \$500 per month on food. For purposes of this decision, the average amount is used.

<sup>14</sup> V. Testimony.

month for rent. His other monthly expenses include \$154 for food<sup>15</sup>, \$275 for electricity and gas; \$125 for cable, cellular, and internet. He owns a 2001 Pontiac for which Mr. C. spends \$170 per month on gas and vehicle maintenance. He spends \$175 per month on entertainment, personal care items and alcohol. He also has medical expenses totaling \$40 per month.

### III. Discussion

#### A. Ms. V.'s income

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> Civil Rule 90.3(a)(1) provides that an obligor parent's child support amount is to be calculated based on his or his "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>17</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified.

Ms. V.'s child support previously was set at \$206 per month in 2007 for one child. Pursuant to the petition for modification, CSSD calculated her modified child support at \$255 per month, based on her earning minimum wage (\$7.75) and working full time (2080 hours) which totaled \$16,120.<sup>18</sup> This income figure, plus the PFD equals \$17,425. CSSD's calculation disregarded the actual current income information provided by Ms. V. The division should use "the best information available" when determining a parent's income from all sources.<sup>19</sup>

When, as here, the division has partial income information for the year for which support is being calculated, the best available information is based on such factors as the parent's actual earnings, job skills and work history.<sup>20</sup> Using actual earnings there are two potential annualizing calculations. One alternative is to take Ms. V.'s wages for the first six months of the year and double the figure to reach an annual income. This calculation results in a total anticipated gross income of \$23,005.30.<sup>21</sup> A second calculation was proposed by CSSD. CSSD averaged the

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<sup>15</sup> Mr. C. testified that he spends, on average, \$300 per month for food. This figure includes the \$146 in food stamps he receives.  $300 = 154 + 146$ .

<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>17</sup> AS 25.27.190(e).

<sup>18</sup> Exh. 4 at 6.

<sup>19</sup> 15 AAC 125.050(a).

<sup>20</sup> See 15 AAC125.050.

<sup>21</sup>  $11,350.15 \times 2 = 22,700.30$ ;  $22,700.30 + 1,305 \text{ PFD} = 23,000.30$ .

income from the pay stubs provided and then annualized it to \$19,473.68. This income figure, plus the PFD, equals \$20,778.68 in total anticipated income for 2010. Ms. V. testified that her hours and number of tables has been reduced. Therefore, simply doubling the first half of the year may overstate her annual income. CSSD's income figure is based on annualized actual current income information. Under the facts presented, it is the best available information upon which to determine Ms. V.'s ability to pay child support during the period for which it is owed.

When child support is calculated using an annual income amount of \$20,778.68, and after mandatory allowable deductions, Ms. V.'s monthly child support obligation for one child is \$298 per month.<sup>22</sup> At the hearing CSSD offered that modification to this figure is not appropriate because it is not a 15% change from the prior amount of \$278. However, the prior amount cited by CSSD was for two children, not one child. The prior support amount for one child was \$206 per month. The newly calculated figure of \$298 per month for one child is more than a 15% change from \$206 for one child so there is a presumptive material change in circumstances.

Ms. V.'s child support obligation is now correctly calculated to be \$298 per month, and it is from this figure that her request for a variation based on financial hardship should be considered.

*B. Financial hardship*

Ms. V. testified that she cannot afford to pay child support in the amount set in the modification order and requested a variance pursuant to Civil Rule 90.3(c).

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The 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>23</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>22</sup> Attachment A.

<sup>23</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>[24]</sup>

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren) 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>25</sup>

Based on the evidence presented, this case does present unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. V. proved by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied.

Mr. C. is presently not working. He receives \$248 a week from unemployment for a total income of \$12,896 or \$1,074.67 per month. His monthly expenses exceed his monthly income by at least \$254.33.<sup>26</sup>

Ms. V. is employed. Her adjusted monthly income (\$1,491.24) exceeds her monthly expenses by \$373 per month exclusive of child support. However, once her child support obligation is considered, Ms. V.'s expenses will exceed her income by \$671. Her monthly expenses appear reasonable and not extravagant except in one area, personal care items. Ms. V. testified that she spends \$550 a month on unspecified personal care. This is an area where she could reduce her spending. But even with an extreme reduction in personal care expenditures her income would not cover all expenses plus a \$298 child support payment. Ms. V.'s child support obligation will strain her finances. Under any one of several scenarios, Ms. V. will have difficulty budgeting for her necessities and child support unless the calculated child support is varied.

The evidence also supports a finding that Mr. C. could benefit from additional financial support for A. Like Ms. V., Mr. C.'s expenses are not excessive yet they still exceed his monthly income. Mr. C. is looking for work and his situation should improve.

On the evidence in its entirety, Ms. V. has proved by clear and convincing evidence that manifest injustice would result if her child support were not varied from the modified amount of \$298. There are "unusual circumstances" of the type contemplated by Civil Rule 90.3 present to warrant granting a downward variance from \$298 per month. As a result, Ms. V.'s ongoing

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<sup>24</sup> Civil Rule 90.3(c)(1).

<sup>25</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>26</sup> \$1,329 - \$1,074.67 = \$254.33.

modified child support obligation should be set at \$230 per month, a reduction of \$68 from the amount calculated using CSSD's income figures.

Even with this reduction, Ms. V. most likely will be unable to pay all of her bills and her child support. However, the custodial household is also encountering financial difficulties, so she will have to make some changes in her financial situation rather than have her child support reduced further.

#### **IV. Conclusion**

Ms. V. has met her burden of proving by clear and convincing evidence that manifest injustice would result if her child support were not varied pursuant to Civil Rule 90.3(c). A child support amount of \$230 per month is reasonable, and should be adopted, effective May 1, 2010.

#### **V. Child Support Order**

- Ms. V. is liable for modified ongoing child support in the amount of \$230 per month, effective May 1, 2010;
- All other provisions of CSSD's May 17, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED the 17<sup>th</sup> day of August, 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 7<sup>th</sup> day of September, 2010.

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

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