

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

IN THE MATTER OF: )  
 )  
C. B. R. ) OAH No. 10-0318-CSS  
 ) CSSD No. 001159139  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor C. B. R.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 2, 2010. The obligee child is G., who is 2 years old.

The formal hearing was held on July 21, 2010. Mr. R. did not appear in person or by telephone; Ms. P. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 20, 2010.

Based on the record and after careful consideration, Mr. R.'s child support is set at \$424 per month, effective August 1, 2008, forward. The Amended Administrative Child Support and Medical Support Order is affirmed in all other respects.

**II. Facts**

*A. Background*

CSSD opened this case after receiving a child support petition on behalf of G. from Ms. P.'s state of residence.<sup>1</sup> CSSD initiated a paternity action on July 8, 2009 and after genetic testing, issued an Order Establishing Paternity on October 30, 2009.<sup>2</sup> On December 18, 2009, CSSD issued an Administrative Child Support and Medical Support Order for Mr. R. to pay support.<sup>3</sup> He requested an administrative review and provided income information.<sup>4</sup> On June 2, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. R.'s ongoing support at \$624 per month, with arrears of \$14,352 for the period from August 2008 through June 2010.<sup>5</sup> Mr. R. filed an appeal on June 10, 2010.<sup>6</sup>

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<sup>1</sup> Pre-Hearing Brief at pg. 1.  
<sup>2</sup> Exhs. 1-5.  
<sup>3</sup> Exh. 7.  
<sup>4</sup> Exh. 8.  
<sup>5</sup> Exh. 13.

On July 7, 2010, the Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Mr. R.’s notice was returned to the OAH by the U.S. Postal Service, marked “unclaimed,” after three attempts at service during the period from July 8, 2010, through July 23, 2010. Ms. P.’s notice was received by her state agency and she subsequently provided a telephone number to be called for the hearing.

Mr. R. could not be reached for the hearing because he has not provided a contact telephone number and he lives outside of Anchorage. Because notice of the hearing had been sent to him by certified mail at his last known address, service of the notice of hearing was found to be effective and the hearing was conducted without his participation.<sup>7</sup>

### **B. Findings**

Based on the record as a whole, the following facts are established by a preponderance of the evidence:

1. Notice of the date and time for the hearing was sent by certified mail to Mr. R. at his last-known address;
2. The notice was returned “unclaimed” after three attempts at service by the U.S. Postal Service;
3. Mr. R. did not appear for the formal hearing and did not provide a contact telephone number, so he could not be reached for the hearing;
4. In 2008, Mr. R. earned \$43,403.85;<sup>8</sup> CSSD used that figure to calculate his child support obligation;<sup>9</sup>
5. As of November 27, 2007, Mr. R. has been paying support to his ex-wife, S. R., for two prior children in the amount of \$1,000 per month pursuant to a decree of dissolution;<sup>10</sup>
6. Using his actual income for 2008, and incorporating a deduction of \$1,000 per month for the support payments Mr. R. makes for his prior children, his child

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<sup>6</sup> Exh. 14.

<sup>7</sup> See 15 AAC 05.010(c).

<sup>8</sup> Exh. 15 at pg. 1.

<sup>9</sup> Exh. 13 at pg. 7.

<sup>10</sup> Exh. 11 at pg. 2.

7. support for G. is correctly calculated at \$424 per month, effective August 2008, forward.<sup>11</sup>

### III. Discussion

Mr. R. filed an appeal of a child support order but he failed to appear for the formal hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> 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."

Civil Rule 90.3 provides for deductions from income for parents who pay support for children from prior relationships or support them in the home. If the parent pays support for a prior child, that amount is deducted from the parent's income in the child support calculation for the younger child at issue. This provision of the rule requires that the child support payments must be ordered by a court or administrative agency and must actually be paid.<sup>13</sup>

The primary issue in this appeal is whether Mr. R. is entitled to a deduction for the child support he pays on behalf of his prior children. CSSD calculated his child support at \$624 per month and did not give him the extra deduction because he did not submit a copy of the court or administrative child support order. An interim order was issued by the undersigned administrative law judge on July 22, 2010, directing Mr. R. to file a copy of his child support order for the prior children no later than August 20, 2010. The order informed Mr. R. he may not be granted the deduction if he failed to provide the information. He did not respond. CSSD and Ms. P. assert that he should not get the deduction in the absence of a copy of the order.

In a child support matter, the person who files the appeal has the burden of proof.<sup>14</sup> Mr. R. filed the appeal here, so he must prove his case by a preponderance of the evidence, meaning he must show that the fact being asserted more likely than not is true.<sup>15</sup>

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<sup>11</sup> CSSD's Notice of Filing Child Support Calculations, pg. 2, received on July 26, 2010. Mr. R.'s 2009 income yields a support amount of \$446 per month. *Id.* at pg. 3. This is not more than a 15% increase over \$424, so the higher amount should not be adopted for 2009 and ongoing. *See* Civil Rule 90.3(h)(1).

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

<sup>13</sup> Civil Rule 90.3(a)(1)(C).

<sup>14</sup> 15 AAC 05.030(h).

Mr. R. provided a printout of child support payments he has made to his ex-wife. The top of page 1 of the printout has the words “S. R. vs. C. R.,” followed by a court case number.<sup>16</sup> Farther down the page, certain fees are assessed, including filing fees and fees for court reporter services. The last fee references a “Final Decree of Dissolution.”<sup>17</sup> At the bottom of the page, a list of child support payments of \$1,000 each paid by Mr. R. to S. J. R. begins on November 27, 2007, and continues monthly through February 2, 2010.<sup>18</sup>

It is easy to understand why CSSD and Ms. P. object to giving Mr. R. the deduction for supporting his prior children. Mr. R. did not appear at the hearing, nor has he made any attempt to provide the court order he was directed to file after the hearing. However, the only information missing from Mr. R.’s evidence is the names and birth dates of his prior children. Ms. P.’s testimony provided information on this issue. She stated that when she and Mr. R. met in November 2007, he had a nine year old girl and a six year old boy for whom he had to pay support to his ex-wife, S. R. Ms. P. added that she even observed Mr. R. send a child support payment to Ms. R. This is general information only, and would not suffice in other contexts, but Ms. P.’s testimony does establish that both of his other children are older than G.

Taken as a whole, Mr. R.’s evidence meets the preponderance standard. Mr. R. has shown it is more likely than not that: a) he has a court order that provides he pay support for two prior children; and b) he has actually paid child support for those prior children in the amount of \$1,000 per month since November 2007. Thus, his child support should be calculated using an additional deduction from income of \$1,000 per month. Inserting this information into CSSD’s online child support calculator yields a support amount of \$424 per month for G.<sup>19</sup>

Finally, Mr. R. filed documents suggesting he would be requesting a variance of his child support amount based on financial hardship under Civil Rule 90.3(c),<sup>20</sup> but he did not appear at the hearing to clarify or present any additional evidence on this issue. He submitted a copy of a hospital bill and wrote that his wife is ill,<sup>21</sup> but without comprehensive evidence of his financial

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<sup>15</sup> 2 AAC 64.290(e). To put it into more concrete terms, the phrase “more likely than not” is often described as being anything over 50% of the evidence.

<sup>16</sup> Exh. 11 at pg. 2.

<sup>17</sup> *Id.*

<sup>18</sup> Exh. 11 at pgs. 2-7.

<sup>19</sup> CSSD’s Notice of Filing Child Support Calculations, pg. 2.

<sup>20</sup> Exh. 8.

<sup>21</sup> Exh. 11 at pg. 10.

circumstances, he is not entitled to a variance of the \$424 per month child support amount that has been calculated from his actual income.

#### **IV. Conclusion**

Mr. R. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He pays support for two prior children of \$1,000 per month, which should be included in his deductions from income. Mr. R.'s child support is correctly calculated at \$424 per month, effective as of August 2008, forward. This figure should be adopted. Mr. R. is not entitled to a hardship variance because he filed only minimal information on that issue and did not appear at the hearing to supplement the evidence.

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

- Mr. R. is liable for child support in the amount of \$424 per month, from August 2008, forward;
- All other provisions of CSSD's June 2, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 9<sup>th</sup> day of September, 2010.

By: Signed \_\_\_\_\_  
Kay L. Howard  
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 29<sup>th</sup> day of September, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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