

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

IN THE MATTER OF:)

R. E. G.)

) OAH No. 10-0341-CSS
) CSSD No. 001160858
)

DECISION AND ORDER

I. Introduction

The obligor, R. E. G., has appealed an Amended Administrative Child Support and Medical Support Order that CSSD issued in his case on June 2, 2010. The obligee child is R., who is 10 years old. The custodian is C. D. F.

The formal hearing was held on August 19, 2010. Mr. G. appeared in person; Ms. F. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD and A. P. interpreted. The hearing was recorded. The record closed on August 19, 2010.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed. Mr. G.'s request for a hardship variance is denied, but he is entitled to a credit of \$800 for direct payments made to Ms. F. from July 2009 through February 2010, which CSSD has already given him.

II. Facts

A. Procedural History

On February 17, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. G.¹ He requested an administrative review and provided income information.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on June 2, 2010, that set Mr. G.'s ongoing child support at \$419 per month, with arrears of \$4,228 for the period from July 2009 through June 2010.³ Mr. G. filed an appeal on June 25, 2010, requesting that the arrears be reduced by \$3,000.⁴

¹ Exh. 3.
² Exhs. 2, 4 & 6.
³ Exh. 7.
⁴ Exh. 8.

B. Material Facts

Mr. G. and Ms. F. were formerly married. They have a son, R., 10 years of age, who lives with Ms. F. in California. The parties had a tumultuous marriage and divorce and are still extremely antagonistic toward each other. Both Mr. G. and Ms. F. filed numerous documents relating their past difficulties with the other party, but the bulk of those exhibits were ruled irrelevant at the hearing and have not been used in the preparation of this decision.

Mr. G. lives in Anchorage with his mother, who has significant health problems. She receives Social Security and adult public assistance and uses these funds to assist Mr. G. with bills and household expenses. Mr. G.'s sister and brother-in-law also live with them and pay \$400 per month for rent.

Mr. G. listed regular bills and expenses totaling \$2,866 per month, the most notable of these being \$1,194 for rent; \$392 for utilities, water and sewer, and telephone; \$250 for the payment on a 2007 Dodge Caravan; \$130 for gasoline and \$145 for vehicle insurance.⁵ Mr. G. also has a \$25,000 student loan debt from studying Computer Networking at UAA. He currently pays \$100 per month on the interest and expects to incur additional student loan debt of \$10,000 before he is finished.

Mr. G. is employed full-time as a parking attendant for the A. C. D. A., where he earns \$14.13 per hour, with negligible overtime.⁶ In 2009, he earned \$31,783.67.⁷ CSSD used this annual income to calculate his child support at \$419 per month.⁸

Ms. F. and the obligee R. also live with relatives. Ms. F. has some work experience, primarily doing secretarial or cleaning work. She testified she is not able to find work very often because she does not speak English fluently.

III. Discussion

Mr. G. does not challenge CSSD's child support calculation of \$419 per month. Rather, he is requesting that the arrears be reduced. His documents state that he paid Ms. F. \$3,785 during the period from May 2007 through February 2010. Finally, the obligor requests a variance in the child support amount due to financial hardship.

⁵ G. hearing testimony.

⁶ Exh. B at pg. 2.

⁷ Exh. 6 at pg. 3.

⁸ Exh. 6 at pg. 7.

A. *Child Support Calculation and Arrears*

A parent is obligated both by statute and at common law to support his or her children.⁹ CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the children.¹⁰ In July 2009, CSSD received a request from California to establish a child support order for Mr. G. on behalf of the parties' son, R.¹¹ Thus, July 2009 is the first month for which Mr. G. is obligated to pay support through CSSD. Some arrears accrued while CSSD was establishing this child support case, but those arrears cannot be removed. CSSD has devised a payment plan in which obligor parents pay only a portion of the arrears in addition to each month's current child support payment.¹² Therefore, Mr. G. will be able to pay off his arrears gradually and not be burdened with them all at once.

CSSD is authorized by its statutes to credit an obligor parent with child support payments made directly to the custodian up until the time the obligor is ordered to make payments through CSSD.¹³ At the time this child support case was being established, Mr. G. had been making child support payments directly to Ms. F. in the amount of \$100 per month.¹⁴ On February 17, 2010, CSSD issued the initial child support order that directed Mr. G. to begin making payments through CSSD.¹⁵ Thus, Mr. G. is entitled to a credit for the eight \$100 payments he made to Ms. F. from July 2009 through February 2010. CSSD has already credited him with these eight payments.¹⁶

Mr. G. is requesting more than the \$800 in direct pay credits he has already received. He documented payments to Ms. F. totaling \$3,785 all the way back to May 2007.¹⁷ However, he cannot be credited in this case for any payment he made before July 2009 because this case did not arise until July 2009 and CSSD has not charged him with support prior to July 2009. He is only entitled to credit for payments he made from July 2009, when this case was initiated, until February 2010, when he was ordered to pay support through CSSD.

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

¹⁰ 15 AAC 125.105(a)(1)-(2).

¹¹ Exh. 7 at pg. 7.

¹² 15 AAC 125.545.

¹³ AS 25.27.020(b).

¹⁴ Exh. 2 at pgs. 15-39.

¹⁵ Exh. 3 at pg. 6.

¹⁶ *See* Exh. 7 at pg. 7.

¹⁷ *See* n.13.

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions for things such as taxes and Social Security. CSSD's amended child support order calculated Mr. G.'s child support at \$419 per month for 2009 and 2010, and ongoing, based on his actual income for 2009.¹⁸ This calculation is correct and should not be disturbed in 2010. Mr. G. is earning essentially the same hourly wage as he was in 2009, and his overtime is minimal. Although it appears he may earn slightly more this year than he did in 2009, this modest increase is not sufficient to trigger a higher support amount for 2010.¹⁹

B. Financial Hardship

Mr. G. claims he cannot afford to pay the child support calculated by CSSD. Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. To obtain a reduction in the amount calculated, he or she must show 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."²⁰ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child 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).²¹

Based on the totality of circumstances, Mr. G.'s case does not present "good cause" for a variance from the amounts calculated from his actual income. Mr. G. did not prove by clear and convincing evidence that manifest injustice would result if his child support obligation were not reduced from the amount calculated.

Mr. G.'s financial situation is strained at this time because he is having to pay both the monthly support amount and a certain portion of the arrears with every payment. However, Mr. G.'s mother, sister and brother-in-law all live in his home. And although his mother has health problems, she is able to contribute to the household expenses. In addition, Mr. G.'s sister and brother-in-law pay rent of \$400 per month. Thus, the obligor gets financial help and is not wholly responsible for the household.

¹⁸ Exh. 7 at pgs. 6 & 7.

¹⁹ At the mid-point of 2010, Mr. G.'s earnings were \$16,817.34. Exh. B at pg. 2. When doubled, this results in annual income of approximately \$33,634.64. This income yields a child support amount of \$443 per month, but it is less than a 15% increase over \$419 per month, so it should not be adopted. See Civil Rule 90.3(h)(1).

²⁰ Civil Rule 90.3(c).

²¹ Civil Rule 90.3, Commentary VI.E.1.

Mr. G. may have to make some difficult decisions in order to get enough money to cover all of his expenses after his child support is collected. Most of Mr. G.'s monthly bills appear to be fairly reasonable, but the primary reason his household expenses are so high is because he rents a three-bedroom house for almost \$1,200 per month. He may need to get a part-time job or ask his relatives to contribute more for the rent or other expenses. The bottom line is that his child support obligation takes priority over other debts and obligations.²²

IV. Conclusion

Mr. G. is obligated to support R. as of July 2009 and he is entitled to a credit for direct child support payments made to Ms. F. in the total amount of \$800 for the period from July 2009 through February 2010.

CSSD correctly calculated Mr. G.'s child support at \$419 per month and that figure has not been adjusted. He did not prove through clear and convincing evidence that manifest injustice would result if his support were not varied from the amount CSSD calculated. CSSD's order should be affirmed.

V. Child Support Order

- CSSD's June 2, 2010, Amended Administrative Child and Medical Support Order is affirmed in all respects:
- Mr. G. is liable for child support in the amount of \$419 per month for July 2009 through June 2010, and ongoing;
- Mr. G. is entitled to a credit of \$800 for direct payments made to Ms. F. of \$100 per month from July 2009 through February 2010.

DATED this 8th day of September, 2010.

By: Signed _____
Kay L. Howard
Administrative Law Judge

²² Even though his monthly support amount will not be reduced, Mr. G. may be able to obtain a temporary reduction in his payment. He should contact his caseworker to get more information.

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 27th 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.]