

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

IN THE MATTER OF:)

K. W. N.)

) OAH No. 10-0419-CSS

) CSSD No. 001137538

DECISION AND ORDER

I. Introduction

The obligor, K. W. N., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 4, 2010. The obligee child is F., who is currently 8 years of age. The custodian is B. F. D.

The hearing was held on September 7, 2010. Both Mr. N. and Ms. D. participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on September 24, 2010.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed – Mr. N.'s child support is modified to \$588 per month, effective June 1, 2010.

II. Facts

A. Background

Mr. N.'s child support obligation for F. was set at \$392 per month in March 2007.¹ Ms. D. requested a modification review on May 10, 2010.² On May 21, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. N. did not provide financial information.⁴ On August 4, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. N.'s ongoing child support to \$588 per month, effective June 1, 2010.⁵ Mr. N. appealed on August 13, 2010, asserting primarily that he

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Prehearing brief at pg. 1.

⁵ Exh. 4.

cannot afford the child support amount because he has four other dependents and he is their sole provider.⁶

B. Material Facts

Mr. N. lives in No Name City with his fiancé and three children, all of them younger than F., the child in this case. Mr. N.'s fiancé, B., is not employed; she stays at home and takes care of the children, who are all three years of age and younger. She has done some work in the child care field in the past.

Mr. N. is employed at the hardware store in No Name City, where he earns \$20.09 per hour. His total income in 2009 was \$41,580.62.⁷ For the first half of 2010, Mr. N. earned \$19,222.74.⁸

F. lives out of state with Ms. D., who is attending college, primarily online so she can be at home and take care of her three children. Her boyfriend is employed and works about 35 hours per week. As a family, he and Ms. D. receive food stamps and Medicaid benefits. Ms. D. hopes to graduate with a degree in Administrative Management in 2013.

III. Discussion

A. Mr. N.'s income

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 Exh. 5.

⁷ Exh. 6, Affidavit of Erinn Brian, at pg. 1.

⁸ *Id.*

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. N.'s child support was set at \$392 per month in 2007. In connection with the modification review, CSSD set his modified child support at \$588 per month, which was calculated from his actual income as reported by his employer from the second quarter of 2009 through the first quarter of 2010, plus the PFD and \$1,200 in Native corporation dividends.¹² This calculation appears to be correct and it meets the necessary 15% difference that supports modification of a child support order. Whether the \$588 per month amount should be affirmed upon appeal or reduced because of his specific circumstances is addressed below.

B. Financial hardship

Mr. N.'s primary issue on appeal is that he cannot afford the child support amount calculated by CSSD from his actual income. 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."¹³ 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).¹⁴

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. N. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. During the hearing, arrangements were made for Mr. N. to fill out a form with information regarding his bills and any other regular monthly expenses. A blank form was faxed to Mr. N. after the hearing and he agreed to return it to the OAH with the necessary information no later than September 24, 2010. However, as of the date of this decision, no information has been received from Mr. N.¹⁵

¹¹ 15 AAC 125.321(d). In this case, the notice was issued on May 21, 2010, so the modification is effective as of June 1, 2010. See Exh. 2.

¹² Exh. 4 at pg. 6.

¹³ Civil Rule 90.3(c).

¹⁴ See Civil Rule 90.3, Commentary VI.E.1.

¹⁵ Ms. D. returned her document with information regarding her expenses on September 23, 2010.

Mr. N. has not provided any information regarding his specific financial circumstances other than to assert that he cannot afford the child support amount. Without more evidence, it is impossible to determine whether Mr. N. is, in fact, experiencing a financial hardship such that he would be entitled to a reduction in his child support amount. Thus, his request for a variance based on financial hardship must be denied.

One final matter should be addressed. Mr. N. stated in his appeal that “If I can’t work a full time job and not have to worry about what I can’t pay so [I] can put food on the table I won’t work then.”¹⁶ Mr. N. should be aware that if he quits his job and requests another modification based on lack of employment, there is a very real possibility that his request would be denied. The above statement could be used as the basis for a finding that he is voluntarily unemployed and should not have his child support reduced.

IV. Conclusion

Mr. N. did not submit the financial information he agreed to file in this appeal. Thus, he did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. Mr. N.’s child support is therefore correctly calculated at \$588 per month, based on his actual income, and that amount should be adopted, effective June 1, 2010.

V. Child Support Order

- CSSD’s Modified Administrative Child Support and Medical Support Order dated August 4, 2010, is affirmed;
- Mr. N. is liable for modified ongoing child support in the amount of \$588 per month, effective June 1, 2010.

DATED this 15th day of October, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁶ Exh. 5.

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 8th day of November, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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