

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

IN THE MATTER OF:)

J. D. L.)

OAH No. 10-0439-CSS

10-0576-CSS

CSSD No. 001158900

DECISION AND ORDER

I. Introduction

The obligor, J. D. L., appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 15, 2010. The obligee child is K., who is 1½ years old. The custodian is K.L. N.

The hearing was held on December 1, 2010. Mr. L. appeared by telephone; Ms. N. appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, Mr. L.'s child support for K. is set at \$497 per month for May 2009 through August 2010; and \$373 per month, effective September 1, 2010, and ongoing. Also, the Modified Administrative Child Support and Medical Support Order that CSSD issued on October 13, 2010, is vacated and Mr. L.'s appeal of that order that gave rise to OAH Case No. 10-0576-CSS is dismissed as moot.

II. Facts

A. Background

Ms. N. applied for child support services for K. in May 2009.¹ After establishing Mr. L.'s paternity of K.,² CSSD served an Administrative Child Support and Medical Support Order on Mr. L. on May 28, 2010.³ He requested an administrative review and both parties provided information.⁴ On July 15, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. L.'s ongoing child support at \$590 per month, with arrears of \$8,106

¹ Exh. 1.

² Exhs. 2-5.

³ Exh. 6.

⁴ Exhs. 7-10.

for the period from May 2009 through July 2010.⁵ Mr. L. appealed on August 28, 2010, asserting in essence that he pays support for prior children.⁶

In addition to appealing CSSD's Amended Administrative Child and Medical Support Order, Mr. L. filed a petition for modification on September 2, 2010,⁷ which resulted in a Modified Administrative Child Support and Medical Support Order being issued on October 13, 2010.⁸ Mr. L. appealed the modification order, which was referred to the Office of Administrative Hearings, given OAH Case No. 10-0576-CSS and assigned to this administrative law judge. During the hearing, the parties agreed that this modification replicates the issues and time periods covered here, in OAH Case No. 10-0439-CSS, and as a result, the modification should be vacated and Mr. L.'s appeal of it should be dismissed as moot.

B. Material Facts

Mr. L. is employed by a telephone company. In 2009, he earned \$44,791.40 as a national account executive.⁹ On June 1st he was moved from Alaska to a store location out of state and promoted to store manager. During the first half of 2010 Mr. L. earned \$22,588.04.¹⁰ As a result of his promotion, he is currently receiving a salary of \$32,800 per year plus commissions based on total store sales of about \$1,500 per month. Using this information plus his monthly salary and his average commission, Mr. L.'s total income for 2010 is estimated at \$53,199.60.¹¹

Mr. L. lives with his girlfriend, P., and her 8 year-old child. P. is not employed and is not able to do much of a job search because they only have one car, which Mr. L. needs to drive to work in the next town. In Alaska, P. was a receptionist at a veterinary clinic for many years. She is currently receiving unemployment benefits and paying the bulk of her own bills, although the extent of those bills is unknown. Mr. L. reported total expenses of \$2,570 per month.¹² He

⁵ Exh. 11.

⁶ Exh. 6.

⁷ Exh. 14.

⁸ Exh. 16.

⁹ Affidavit of Andrew Rawls, received September 8, 2010.

¹⁰ Exh. 7 at pg. 1.

¹¹ Exh. 5 at pg. 6. It is difficult to estimate Mr. L.'s 2010 income because he changed positions mid-year and is now earning a salary plus commissions. CSSD's estimate of \$53,199.60 is not unreasonable; in the absence of more accurate documentation, the agency's amount should be used.

¹² See Exh. 22 and Mr. L.'s hearing testimony.

has had medical bills of about \$1,687 written off, but he is currently paying on various payday loans.

K. lives with his mother, K. N., a single parent with three children in the home. Her 2009 income was about \$56,607.¹³ She previously paid \$1,700 per month for daycare for all three children, but she had to cancel it for her older children and now pays \$765 per month for K. alone. Ms. N. submitted extensive evidence of daycare and medical expenses, in addition to her 2008 and 2009 tax returns.¹⁴ She also listed her regular monthly expenses at \$5,742.04.¹⁵

Mr. L. has a total of four children, in birth order: M., I., S. and K., the child in this case.¹⁶ He pays support for all of them through CSSD. In 2009, his support amount for M. was \$290 per month and for I. it was \$320 per month. As of September 1, 2010, his child support order for I. has been modified to \$486 per month, and S. has been added to the order for M., making their total \$787 per month as of that date.

II. Discussion

Mr. L. appealed his child support order on the basis that he cannot afford the child support amount collected for his three cases being administered by CSSD. He requested a hardship variance, to which Ms. N. strenuously objected. She claims that at a minimum, Mr. L. should be obligated to pay the entire \$765 per month daycare bill for K. In essence, she wants his calculated child support amount increased.

As the person who filed the appeal, Mr. L. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative Child and Medical Support Order is incorrect.¹⁷ He has met that burden because the child support calculations for his three older children were incorrect. Those support amounts have now been correctly modified and the extent to which they impact Mr. L.'s obligation for K. will be discussed below.

¹³ Exh. 19at pg. 3.

¹⁴ Exhs. 17-21.

¹⁵ Ms. N.'s documents received on December 2, 2010.

¹⁶ M. and S. are siblings, so Mr. L. has three cases for these four children. Mr. L. may have another child, but any support obligation he has for it is not being paid via CSSD.

¹⁷ 15 AAC 05.030(h).

A. *Mr. L.'s child support calculation for K.*

A parent is obligated both by statute and at common law to support his or her children.¹⁸ This obligation begins when the child is born, but in order to simplify collections, CSSD adopted a regulation that provides it will only collect 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 child(ren).¹⁹ In this case, Ms. N. applied for services for K. in May 2009, the month after he was born. Thus, under 15 AAC 125.105(a)(2), that is when Mr. L.'s obligation to pay support for K. through CSSD begins.

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated as a certain percentage of his or her adjusted annual (net) income, which is derived from the parent's "total income from all sources," minus mandatory deductions such as taxes and Social Security. Civil Rule 90.3(a)(1)(C) provides that a parent who pays support for a prior child is entitled to an additional deduction from the parent's income in a support calculation for a younger child.

In this case, Mr. L. has three prior children whose child support orders have greatly affected his obligation for K. In 2009, Mr. L. was under CSSD orders to pay \$290 per month for M., his oldest child, and \$320 per month for I., a total amount of \$610 per month. He is thus entitled to a deduction from income of this monthly amount in his child support calculation for K. for 2009.

CSSD calculated Mr. L.'s 2009 child support obligation for K. at \$497 per month.²⁰ This calculation was done using the obligor's actual income of \$44,791.40.²¹ In addition, CSSD included the deduction from income of \$610 per month for the obligor's support orders for his (at that time) two prior children. The calculation for K. for 2009 is thus correct because it utilizes his actual income for the year and incorporates his orders for his older children.

The 2009 support amount of \$497 per month for K. should be continued from 2009 into 2010, and last through August 2010. As of September 2010, Mr. L.'s support orders for his prior children were modified upward to \$1,176, and the calculation for K. must reflect those changes. Using his expected annual income for 2010 of \$53,199.60, and incorporating the increased

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁹ 15 AAC 125.105(a)(1)-(2).

²⁰ Exh. 11 at pg. 6.

²¹ Affidavit of Andrew Rawls.

orders for his prior children, CSSD calculated Mr. L.'s child support obligation for K. at \$373 per month.²² The ongoing monthly support amount for K. is now correctly calculated as of September 2010 forward. Whether it should be adopted or reduced because of Mr. L.'s claim of financial hardship is addressed below.

B. Financial hardship

Mr. L. claims that he cannot afford the child support amount calculated 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."²³ 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).²⁴

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. L. 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. Mr. L. has several child support cases with a large monthly obligation due, but this in itself is not sufficient to establish manifest injustice. Mr. L. has a well-paying job and lives with a partner who is capable of working. He has no significant health problems or other circumstances that would tend to impact this case. Also, CSSD is limited in the total amount it can collect on his three cases – after his child support decisions are issued Mr. L. may need to contact CSSD to ensure that his employer is withholding the correct amount.

Ms. N. asserts that Mr. L.'s child support should be higher than calculated because her daycare bill for K. exceeds the obligor's calculated support amount of \$373 per month. Alaska law does not use a custodial parent's expenses as the measure of calculating child support. Rather, it is the noncustodial parent's "total income from all sources" that forms the basis of a child support calculation. It is unfortunate for K. that Mr. L. has to pay support for prior

²² Exh. 16 at pg. 6.

²³ Civil Rule 90.3(c).

²⁴ See Civil Rule 90.3, Commentary VI.E.1.

children, which has reduced his obligation to this child, but the support amounts calculated by CSSD are correct under the law of this state.

One final issue should be discussed: the contested issues between these parties involve outstanding medical bills, health insurance and credits/debits based on the payment of health insurance premiums for K. These issues will be addressed by the parties' caseworker, who is and will be better able to make up-to-date changes in the credits or debits based on the current premium amounts paid by the parties.

IV. Conclusion

Mr. L. met his burden of proving that the child support amounts reflected in the Amended Administrative Child and Medical Support Order were incorrect. His support obligation for K. is now correctly calculated at \$497 per month for May 2009 through August 2010, and \$373 per month, effective from September 2010 forward. Mr. L. 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. The above amounts should be adopted.

The issues raised and time periods involved in this establishment order cover all of the time periods addressed in the Modified Administrative Child Support and Medical Support Order that CSSD issued in this case on October 13, 2010. Thus, that modification order should be vacated and Mr. L.'s appeal of the order that gave rise to OAH Case No. 10-0576-CSS should be dismissed as moot.

V. Child Support Order

- Mr. L. is liable for child support for K. in the amount of \$497 per month for May 2009 through August 2010; and \$373 per month, effective September 1, 2010, and ongoing;
- The Modified Administrative Child Support and Medical Support Order that CSSD issued in this case on October 13, 2010, is VACATED and Mr. L.'s appeal of the order that gave rise to OAH Case No. 10-0576-CSS is DISMISSED as moot;

- All other provisions of CSSD's July 15, 2010, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 28th day of December, 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 14th day of January, 2011.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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