

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

IN THE MATTER OF:)

S. H. S.)

) OAH No. 10-0472-CSS

) CSSD No. 001064057

DECISION AND ORDER

I. Introduction

This case involves the obligor S. H. S.’s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 23, 2010. The obligee children are A., 15, and B., 13. The custodian is K. C.

The formal hearing was held on October 6, 2010. Mr. S. appeared in person; Ms. C. participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 4, 2010.

Having reviewed the record in this case and after due deliberation, the petition for modification is denied. CSSD has not shown “good cause and material change in circumstances” such that Mr. S.’s child support obligation should be modified. His child support remains unchanged at \$250 per month for two children and \$200 per month for one child.

II. Facts

A. History

Mr. S.’s child support obligation for Q.,¹ A. and B. was set at \$300 per month for three children in December 2007.² When Q. emancipated in 2009, his support went down to \$250 per month for two children, under the terms of the 2007 order.³ CSSD initiated a modification review in October 2009 but it was subsequently vacated.⁴ Ms. C. requested a modification on June 21, 2010.⁵ On June 28, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁶ Mr. S. did not provide financial information, so on August 23, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order

¹ Q. emancipated in October 2009 and is no longer on Mr. S.’s child support order.

² Exh. 1.

³ Exh. 1 at pg. 4, n.16.

⁴ Exhs. 2-4.

⁵ Exh. 5.

⁶ Exh. 6.

that set his ongoing child support at \$472 per month for two children, effective July 1, 2010.⁷ Mr. S. filed an appeal on September 14, 2010, stating in essence that his child support should stay at \$250 per month for two children, as previously determined.⁸

A. *Material Facts*

Mr. S. is employed at A. H., where he earns \$12 per hour.⁹ Just last month he received a raise from \$11.50 per hour. In 2009, his earnings were \$24,886.05, plus the PFD.¹⁰ In the first half of 2010, he earned \$11,607.82, which, if it were doubled, would total \$23,215.64.¹¹ Mr. S.'s income from earnings has gone down somewhat from his highest annual total in 2008 of \$25,616.86.¹² Since his hourly rate has increased from \$11 per hour in 2007, his loss of income since then is apparently the result of working fewer hours and getting less overtime pay.

Mr. S. lives with N. Y. and together they have four children in the home: Ms. Y.'s teenage son from a prior relationship and their three younger children aged from three to eight years of age. Ms. Y. is fully disabled and unable to work outside the home, so she receives SSI and adult public assistance benefits totaling \$1036 per month.¹³

Mr. S.'s monthly expenses total approximately \$3663 per month, which includes \$600 for space rent; \$415 for the mortgage; \$900 for food; \$50 for food away from home; \$135 for natural gas; \$158 for electricity; \$180 for two cell phones; \$375 for gasoline; \$50 for vehicle maintenance; \$200 for vehicle insurance; \$50 for entertainment; \$100 for personal care items; \$400 for clothing and \$50 for shoes.¹⁴ Mr. S. has had his telephone, cable and Internet services cut off and he still owes the cable company \$390.¹⁵

Ms. C. lives out of state with A. and B. A third child, D., 11 years old, is listed on her tax return as also being in the home.¹⁶ Q., the parties' older child who was born in 1991, emancipated in 2009.

⁷ Exh. 7.

⁸ Exh. 8.

⁹ Except where indicated, the facts are taken from Mr. S.'s hearing testimony.

¹⁰ Exh. 9.

¹¹ *Id.*

¹² *Id.*

¹³ Exh. 11 at pg. 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Exh. 14 at pg. 6.

Ms. C. is a self-employed massage therapist; in 2009, she reported gross receipts of \$28,244 and a net profit of \$14,956.¹⁷ Ms. C. listed monthly expenses totaling approximately \$4019 per month, which includes \$1,200 for the mortgage; \$450 for food; \$250 for food away from home; \$100 for natural gas; \$70 for wood/oil; \$120 for water; \$50 for Internet services; \$450 for electricity; \$100 for a cell phone; \$300 for the payment on a 2004 Honda; \$330 for gasoline and maintenance; \$160 for vehicle insurance; \$232 for entertainment; \$380 for personal care items and \$130 for life insurance.¹⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁹ 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."²⁰ Civil Rule 90.3 presumes that if the newly calculated child support amount is more than 15% different, either higher or lower than the previous order, the requirement for "good cause and material change of circumstances" has been met and the support amount may be modified. Civil Rule 90.3(h) does not require that the child support amount be modified if that 15% threshold change is not reached.

CSSD filed a revised child support calculation after the hearing of \$543 per month for two children and \$402 per month for one child, based on Mr. S.'s 2009 federal income tax return.²¹ That calculation appears to be correct. It is from this figure that the obligor's request for a hardship variance should be considered. In 2007, CSSD did not oppose "some variance" in Mr. S.'s child support obligation, but the division now opposes any reduction in his child support from the \$472 per month 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

¹⁷ Exh. 14 at pg. 8.

¹⁸ Exh. 13.

¹⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁰ AS 25.27.190(e).

²¹ Exh. 15.

injustice would result if the support award were not varied."²² If there are "unusual circumstances" in a particular case, this 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 amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[23]

All the relevant evidence, including the custodian's circumstances, should be considered in order to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).²⁴

Ms. C.'s evidence regarding her financial circumstances is not convincing. In 2009, the last year for which figure are available, the custodian had gross receipts of \$28,244 and net profit of just \$14,956.²⁵ Yet she reported household expenses of about \$4000 per month, which, when annualized, totals over \$48,000 per year. It would be impossible to meet all of these expenses with her reported income.

There is no explanation in the record for this large discrepancy between the custodian's income and expenses. It is possible, of course, that Ms. C. is earning much more in 2010 than she did in 2009, so she can afford these higher expenses. It is also possible that she lives with someone who helps support the household, although she drew a line through the "spouse" information on her expenses sheet.²⁶ Whatever the reason, without an explanation of what her financial circumstances actually are and how she supports herself, Ms. C.'s evidence is much less credible than Mr. S.'s and it is thus much less useful to resolve the issues in this appeal.

Mr. S. also cannot pay all of his bills, but at least the obligor provided realistic information that explains the shortfalls. His expenses all appear to be reasonable and not overstated. His partner, N. Y., receives disability benefits and contributes to the household financially. But they continue to get behind and as a result have had several utilities services shut off, with at least one balance of \$390 still owing. Even with the amount of money that Ms. Y. contributes from her disability benefits, there is not enough income in Mr. S.'s household to

²² Civil Rule 90.3(c).

²³ Civil Rule 90.3(c)(1).

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

²⁵ Exh. 14 at pg. 8.

²⁶ See Exh. 13.

pay all of his bills and his child support obligation as calculated. Ms. Y.'s contribution is limited to her disability benefits and Mr. S. cannot obtain another part-time job because he has to fill in at home due to her limitations. Moreover, his income has decreased somewhat since 2007.

In essence, Mr. S. has not had a material change in circumstances since the 2007 hearing when his request for a hardship variance was granted. His income is down somewhat, although marginally, since then, but his household situation remains the same.

The obligor has once again proven by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amount calculated under Civil Rule 90.3. His child support should remain at the current amount: \$250 per month for two children and \$200 per month for one child.

IV. Conclusion

CSSD has not shown "good cause and material change in circumstances" such that Mr. S.'s child support should be modified from the amounts determined after his 2007 appeal and formal hearing. Mr. S. met his burden of proving that manifest injustice would result if his child support were not varied pursuant to Civil Rule 90.3(c). His child support should remain at \$250 per month for two children and \$200 per month for one child. The August 23, 2010, Modified Administrative Child Support and Medical Support Order should be vacated.

V. Child Support Order

- The August 23, 2010, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. S. remains liable for modified ongoing child support in the amount of \$250 per month for two children and \$200 per month for one child;
- All other provisions of the last effective order issued, the September 25, 2007, Modified Administrative Child Support and Medical Support Order, remain in full force and effect.

DATED this 30th day of November, 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 21st day of December, 2010.

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

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