

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

IN THE MATTER OF:)
)
D. K.) OAH No. 10-0473-CSS
) CSSD No. 001116109
_____)

DECISION AND ORDER

I. Introduction

The obligor, D. K., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The custodian of record is J. S. and the obligee child is O. A. B.

A hearing was held on October 6, 2010. Mr. K. and Ms. S. both appeared by phone. CSSD was represented by Child Support Specialist Erinn Brian who appeared in person. Based on the testimony and exhibits in the record, Mr. K.'s child support obligation for O. should be set at \$448 per month.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order issued on September 1, 2007, set Mr. K.'s child support obligation at \$241 per month.¹ Mr. K. requested a modification.² Notice of Petition for Modification of Administrative Support Order was mailed on July 12, 2010.³ A Modified Administrative Child Support and Medical Support Order setting Mr. K.'s support obligation at \$652 per month was issued on September 3, 2010.⁴ Mr. K. appealed.⁵ Prior to the hearing, Mr. K. faxed additional income and expense information, which has been marked as Exhibit 7.

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¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 5.
⁵ Exhibit 6.

*B. Material Facts*⁶

Mr. K. recently changed jobs and is now working for a publishing company. He earns \$15 per hour, 40 hours per week, and is not allowed to work overtime. His prior job on the North Slope paid him approximately \$43,000 per year.⁷ Mr. K. left this job so he would not be away from his family so much. He is married, and has three children living with him at home. He pays child support for O., the obligee child in this case, as well as for one other child who is younger than O. Mr. K.'s wife works part time earning \$9 per hour for up to 24 hours in a week. She does not work more hours because the family would then need to pay someone to provide child care.

Not including child support obligations, the K. family's expenses total about \$3,200 per month.⁸ The family's income is \$2600 per month from Mr. K.,⁹ and \$936 per month from Mrs. K.,¹⁰ for a total of \$3,536 per month.

Ms. S. is also married. She has two children at home, including O., and has a child support obligation for one other child. Her husband has a separate child support obligation for another child. She is not able to work because of O.'s medical condition.¹¹ Her husband does work; earning \$13.50 per hour, 48 hours per week.

Not including child support obligations, the S. family's expenses total about \$2,550 per month. Based on Mr. S.'s income, the family's monthly income would be about \$702 per week¹² or \$3,042 per month.¹³

⁶ Unless otherwise noted, facts related to Mr. K. are based on his testimony. Facts concerning Ms. S. are based on her testimony.

⁷ Exhibit 4, page 5 (pay stub showing 2009 year to date income of \$43,432). *See also*, Exhibit 4, page 4 (pay stub showing year to date income of \$28,404 through July 11, 2010).

⁸ Exhibit 7 & Testimony of Mr. K.

⁹ \$15 per hour times 40 hours per week times 52 weeks divided by 12 months per year.

¹⁰ \$9 per hour times 24 hours per week times 52 weeks divided by 12 months per year.

¹¹ Ms. S. needs to be available several times each week at unpredictable times to pick Orion up at school. She testified that employers are not able to accommodate that need, and she has lost at least one job because of this. There was no claim in this case that she should be working, and no finding that she is unreasonably unemployed.

¹² 40 hours at \$13.50 and 8 hours overtime at \$20.25. Ms. S. testified that her husband did not always get overtime pay for work in excess of 40 hours per week, but it is not clear how that could occur consistent with the Alaska Wage and Hour Act.

¹³ \$702 per week times 52 weeks, divided by 12.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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."¹⁵ 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 required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁶ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁷

Based on his monthly income of \$2600 per month, Mr. K.'s annual income is \$31,200. Based on CSSD's ongoing child support calculator, this results in a child support obligation of \$448 per month for one child.¹⁸ This new calculation is a large enough change from the prior support amount to constitute a material change of circumstances.

Mr. K. requested an adjustment in his child support obligation based on financial hardship. Civil Rule 90.3(c) allows for varying the child support obligation for good cause. There must be clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁹

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. The court shall consider the custodial parent's income in this determination.^[20]

Both Mr. K. and Ms. S. provided compelling testimony as to the difficult financial situations they are in. While the income and expense figures they provided show some income remaining at the end of each month, those figures do not include the parties' respective child

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ AS 25.27.190(e).

¹⁶ 15 AAC 125.321(d).

¹⁷ 15 AAC 05.030(h).

¹⁸ Attachment A.

¹⁹ Civil Rule 90.3(c)(1).

²⁰ Civil Rule 90.3(c)(1).

support obligations. Neither parent is living extravagantly nor do they have a significant amount of consumer debt.

Even though his expenses are higher than his income, Mr. K. has not met his burden of showing by clear and convincing evidence that unusual circumstances exist such that manifest injustice would result if the support amount is not varied.²¹ Mr. K. has made some lifestyle choices that have placed him in a difficult financial situation. He has taken on responsibility for more children, which has added to his expenses. His current job pays less, and his commuting expenses have increased. All of these choices may be very reasonable, but his oldest child, O., should not be expected to finance those choices through a lower child support award.²²

IV. Conclusion

Mr. K. has not shown by clear and convincing evidence that it would be manifestly unjust to require him to support O. at the level set by Civil Rule 90.3(a). Based on Civil Rule 90.3 and on Mr. K.'s income, his child support obligation should be \$448 per month.

V. Child Support Order

- Mr. K.'s child support obligation is set at \$448 per month for one child, effective August 1, 2010.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 3, 2010, remain in full force and effect.

DATED this 11th day of October, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

²¹ Civil Rule 90.3(c)(1).

²² Mr. K. is also paying child support for a subsequent child. He may be able to obtain a modification of that child support order based on the change in his support obligation for Orion. Civil Rule 90.3(a)(1)(C)(credit for child support payments for children of prior relationships). It is his obligation to request that modification from CSSD if he wishes to do so.

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 29th day of October, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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