

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

IN THE MATTER OF: )

J. D. L. )

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OAH No. 10-0556-CSS

CSSD No. 001105580

**DECISION AND ORDER**

**I. Introduction**

The obligor, J. D. L., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 13, 2010. The obligee children are M., 10, and S., 3. The custodian is N. M. A.

The hearing was held on December 1, 2010. Mr. L. appeared by telephone; Ms. A. was contacted by telephone but did not wish to participate. 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 M. and S. is modified to \$787 per month, effective September 1, 2010, and ongoing. He also owes additional arrears for S. of \$246 for the time period prior to September 1st.

**II. Facts**

*A. Background*

Mr. L.'s child support obligation for M. was set at \$290 per month in December 2002.<sup>1</sup> Ms. A. applied for child support services for S. and requested modification of the order for M. on June 10, 2010.<sup>2</sup> On August 26, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. L. provided income information.<sup>4</sup> On October 13, 2010, CSSD issued a child support order that set Mr. L.'s ongoing support for both children at \$690 per month, effective September 1, 2010, with additional arrears owed just for S. before the effective date of the modification in the amount of \$246.<sup>5</sup> Mr. L. appealed on

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 5.

November 1, 2010.<sup>6</sup> Prior to the hearing, CSSD revised its child support calculation for both M. and S. to \$787 per month.<sup>7</sup> The increase is due to the unique method of calculating support in a case with two children when another child is sandwiched between them and thus changes the calculation, as will be discussed below.

*B. Material Facts*

Mr. L. is employed by a telephone company. During the first half of 2010 he lived in Alaska and worked for the company as a national account executive. On June 1<sup>st</sup> he was moved to a store location out of state and promoted to store manager. He currently receives a salary of \$32,800 per year plus a commission, based on total store sales, of about \$1,500 per month.

Mr. L. earned \$22,588.04 during the first half of 2010.<sup>8</sup> Using this information plus his monthly salary and his average commission, Mr. L.'s total income for 2010 is estimated at \$53,199.60.<sup>9</sup>

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 Alaska, P. was a receptionist at a veterinary clinic. She is currently receiving unemployment benefits and paying her own bills. Mr. L. reported bills of \$2,570 per month.<sup>10</sup> He has had medical bills of about \$1,687 written off, but he is currently paying on various payday loans.

M. and S. live with their mother, Ms. A. Little else is known of her circumstances because she did not wish to participate in the hearing and did not submit any evidence to be considered.

Mr. L. has a total of four children, in birth order: M., I., S. and K. He pays support for all of them through CSSD. In a related case, his child support order for I. has been modified to \$486 per month, which has a mathematical effect in this case. K. is younger than M. and S. so

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<sup>6</sup> Exh. 6.

<sup>7</sup> Exh. 7.

<sup>8</sup> Exh. 7 at pg. 1.

<sup>9</sup> 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 a more accurate figure that can be documented, the agency's amount should be used.

<sup>10</sup> See Exh. 11.

he does not figure into the calculation of support in their case, but the child support calculations of all three of the older children impact the determination of support in K.'s case.

### III. Discussion

#### A. *Mr. L.'s child support calculation*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>11</sup> 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.<sup>12</sup>

Mr. L.'s child support for M. was set at \$290 per month in 2002. In connection with the modification review, CSSD set his modified child support at \$690 per month for two children, which was calculated from an estimation of his 2010 income taken from the Alaska Department of Labor and the paystubs he provided.<sup>13</sup> However, this number was not obtained from a simple two-child support calculation. Instead, it was calculated using a multi-step process because there is one other child between M. and S. that effects the calculation.

Civil Rule 90.3(a)(1)(C) and (D) provide that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction from the parent's income in calculating the support obligation for a younger child. In this case, three calculations must be performed to determine Mr. L.'s support obligation for M. and S.

M. is Mr. L.'s oldest child and his support amount for her is the easiest to calculate – 20% of his adjusted annual (net) income, pursuant to Civil Rule 90.3(a)(2)(A). This equals \$608 per month.<sup>14</sup> I.'s amount must be determined next because he is next in line. This is done by including Mr. L.'s support amount for M. as an additional deduction from income for I.'s

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<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> 15 AAC 125.321(d). In this case, the notice was issued on August 26, 2010, so the modification is effective as of September 1, 2010. *See* Exh. 3.

<sup>13</sup> Exh. 5 at pg. 7.

<sup>14</sup> Exh. 5 at pg. 6.

calculation. This results in a lower adjusted annual income and lower support amount at \$486 per month.<sup>15</sup>

The final step in the process is to determine Mr. L.'s support obligation for S. and add it to the amount for M. – it cannot be done using a simple two-child calculation because I. is between the girls and Mr. L.'s support obligation for him must be taken into consideration for S. Civil Rule 90.3(a)(2)(B) directs CSSD to calculate support for each additional child at 7% of the parent's adjusted annual income. As a result of the calculation for I., Mr. L.'s adjusted annual income is \$29,184.<sup>16</sup> When this figure is multiplied times 7%, the obligor's support amount for S. equals \$2,145.36 per year, or \$178.78 per month.<sup>17</sup> This is added to the \$608 per month for M. and results in a total child support amount of \$786.78 for two children, which is rounded to \$787 per month.<sup>18</sup>

This monthly support amount for M. and S. is now correctly calculated. Whether it should be affirmed 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."<sup>19</sup> 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).<sup>20</sup>

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

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<sup>15</sup> See *In the Matter of J. D. L.*, OAH Case No. 10-0555 (Dec. 28, 2010).

<sup>16</sup> *Id.*

<sup>17</sup> Exh. 7 at pg. 1.

<sup>18</sup> *Id.*

<sup>19</sup> Civil Rule 90.3(c).

<sup>20</sup> See Civil Rule 90.3, Commentary VI.E.1.

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 medical needs 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.

#### **IV. Conclusion**

Mr. L. did not meet his burden of proving that the revised child support amount of \$787 per month is incorrect. Nor did he 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 lowered. The revised amount should be adopted.

#### **V. Child Support Order**

- Mr. L. is liable for modified child support for M. and S. in the amount of \$787 per month, effective September 1, 2010, and ongoing;
- Mr. L. is liable for additional arrears for S. totaling \$246 for June 2010 through August 2010;
- All other provisions of CSSD's October 13, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 28<sup>th</sup> 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 14<sup>th</sup> 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.]