

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

IN THE MATTER OF:)	
)	OAH No. 10-0602-CSS
R. L. P.)	CSSD No. 001114954
_____)	

DECISION AND ORDER

I. Introduction

This matter involves the obligor R. L. P.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 8, 2010. The obligee child is C., 11. The custodian of record is E. C. R.

The formal hearing was held on December 20, 2010. Mr. P. appeared in person; the custodian did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. P.'s arrears are set at \$50 per month, from August 2009 through February 2011, and ongoing support is set at \$500 per month, effective March 1, 2011, based on the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Procedural History

This case is based on public assistance, which began on C.'s behalf in August 2009.² CSSD established paternity on February 22, 2010.³ On August 6, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. P.⁴ He requested an administrative review and provided income information.⁵ On November 8, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. P.'s ongoing

¹ Ms. R. could not be reached for the hearing. The first contact telephone number was out of service and the second number called was not her number, although the person who answered the telephone seemed to know who she is. Ms. R. phoned the Office of Administrative Hearings (OAH) the day after the hearing and made arrangements to obtain a copy of the digital recording of the hearing. That was the last contact from Ms. R.

² Exh. 10 at pgs. 2 & 8.

³ Exh. 5.

⁴ Exh. 6.

⁵ Exhs. 7-9.

child support at \$630 per month, with arrears of \$10,080 for the period from August 2009 through November 2010.⁶ Mr. P. appealed on November 30, 2010.⁷

B. Material Facts

Mr. P. and Ms. R. had a brief relationship in mid-1998 but they parted ways before Mr. P. knew that Ms. R. was pregnant.⁸ A mutual friend later told Mr. P. that Ms. R. had had a baby but that the father was someone else. Mr. P. did not learn about C. until August 5, 2009. On that date, Ms. R. located the obligor's wife, S., on a social networking site and told S. that Mr. P. was the father of the child who had been born to Ms. R. in 1999.⁹ In that same message, the custodian admitted that she had previously kept information about the child from Mr. P.¹⁰

Mr. P. is currently employed full-time for No Name Freightways, where he earns \$18.36 per hour.¹¹ Mr. P.'s 2009 income totaled \$45,802.04.¹² A child support amount calculated from this income figure is \$630 per month.¹³ In 2010, he earned a total of \$35,315.53 from NNF.¹⁴ Mr. P. is also employed part-time for Car Services, where he is an on-call limo driver at \$15 per hour. He received a total of \$8,564.62 from Car Services in 2010.¹⁵ Mr. P.'s total income in 2010, for child support purposes,¹⁶ was \$43,880.15.¹⁷ This total income figure results in a child support calculation of \$608 per month.¹⁸

Mr. P. and his wife, S., purchased their home five years ago and as a result have little equity in it. In addition, their household includes S.'s sister, who is 15 years old and attending high school. S. and her sister's parents are divorced, so S. took her sister in so she would have a

⁶ Exh. 10.

⁷ Exh. 11.

⁸ Unless otherwise stated, the findings are taken from Mr. P.'s hearing testimony.

⁹ See Exh. 7 at pg. 5.

¹⁰ *Id.*

¹¹ Exh. 16 at pg. 3. Mr. P. reported that this paystub dated December 22, 2010, would be his last one for the year.

¹² Exh. 13 at pg. 1.

¹³ Exh. 10 at pg. 7.

¹⁴ *Id.*

¹⁵ Exh. 15 at pg. 2.

¹⁶ Mr. P. also formerly worked part-time for No Name Transportation but left that employment in early 2010. See Exh. 13. A preliminary finding was made at the hearing to exclude Mr. P.'s income from No Name Transport for purposes of this child support calculation as it would inflate his income for the entire year even though he stopped working there in the first quarter.

¹⁷ CSSD estimated Mr. P.'s total income at \$45,292.78, but this amount included an extra week of work added to the total showing in his December 22, 2010, paystub. See Exh. 19 at pg. 3.

place to live and finish school. The P.s fully support her and provide for her needs, including food, clothing and school expenses.

The P.s have had financial difficulties in the past that have caused them to enter into a debt consolidation agreement in which they pay \$500 per month toward that debt and have a balance of about \$8,000.¹⁹ Even with the debt consolidation, their finances are stretched very thin. Mr. P. listed regular monthly expenses of about \$5,036, which includes \$1,270 for the mortgage; \$600 per month for food;²⁰ \$244 for natural gas; \$65 for water; \$30 for trash pick-up; \$130 for electricity; \$65 for waste water; \$115 for cable; \$225 for cell phones; \$327.07 for a 2003 Chevrolet Avalanche; \$529.34 for a 2004 Pontiac Bonneville; \$150 for gasoline; \$250 for vehicle insurance; \$150 for home insurance;²¹ \$100 for personal care expenses; \$150 for unpaid medical bills; \$500.54 for debt settlement; and \$135 for a credit card payment.²² The P.s cannot afford to sell their vehicles because they are “upside down” in both of them and they need both vehicles because they each work two jobs with separate schedules. Looking at his list of expenses, just about the only way for the obligor to cut costs is by reducing the family’s utility demands and giving up their cable TV and cell phones. Even if they do that, Mr. P. will not be able to meet all of his financial obligations after paying his monthly child support amount and the arrears payment.

Little, if nothing is known about Ms. R.’s and C.’s current circumstances because the custodian did not participate in the hearing. It does appear from the record that she receives public assistance benefits on C.’s behalf.²³

III. Discussion

A. Effective Date of the Obligation

A parent is obligated both by statute and at common law to support his or her children.²⁴ This obligation begins when the child is born.²⁵ By regulation, CSSD collects support from the

¹⁸ Attachment A.

¹⁹ See Exh. 14.

²⁰ Their statement said \$400-\$500 for food, but Mr. P. revised it to \$600 in a post-hearing statement received on December 21, 2010.

²¹ Mr. P. also pays \$439.38 for health care, but it was not included in the total of this list because it is accounted for in paystubs.

²² Exh. 14.

²³ See Exh. 10 at pg. 8.

²⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.²⁶

CSSD initially charged Mr. P. with support as of August 2008.²⁷ Subsequently, however, CSSD's Amended Administrative Child and Medical Support Order indicated public assistance began in August 2009, so CSSD vacated Mr. P.'s child support arrears through July 2009 and charged him instead only as of August 2009.²⁸ The person who filed the appeal, in this case, Mr. P., has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.²⁹

B. Child Support Calculation

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. CSSD first calculated Mr. P.'s child support at \$630 per month for 2009 and 2010, but after the hearing kept that amount for 2009 and fine-tuned the figure for 2010 and 2011 to \$624 per month.³⁰ As discussed above, however, Mr. P.'s total income for child support purposes was \$43,880.15 in 2010.³¹ That figure yields a child support calculation of \$608 per month, which should be applied to 2010 and 2011.

C. Good Cause Variance

The third issue in this case concerns whether Mr. P.'s child support obligation should be adjusted. 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."³² Civil Rule 90.3 also states that

²⁵ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

²⁶ 15 AAC 125.105(a)(1)-(2).

²⁷ Exh. 6 at pgs. 2 & 8.

²⁸ Exh. 10 at pgs. 2, 8 & 9.

²⁹ 15 AAC 05.030(h).

³⁰ Exh. 18 at pgs. 1 & 2.

³¹ *See* n.16.

³² Civil Rule 90.3(c).

when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. Vachon v. Pugliese, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.^[33]

Based on all the evidence, Mr. P. proved by clear and convincing evidence that manifest injustice would result if he were required to pay the full arrears in his case in addition to the full monthly support amount. In applying the above language to Mr. P.'s arrears, a primary factor to be taken into consideration is that Ms. R. hid the fact of the obligor's paternity for many years. Mr. P. did not know he was C.'s father until August 2009, when C. was almost nine years old. By that time, the obligor had already made significant financial obligations that did not account for supporting C. Given that Mr. P. and his wife have expenses that take up nearly all of their net income, without an adjustment, they will be in danger of losing their housing. They do not have the leeway in their budget to absorb the nearly \$1,000 per month for the ongoing support amount and arrears payment. Under these circumstances, Mr. P. is entitled to relief under Civil Rule 90.3(c).

Based on the record as a whole, two methods of adjusting Mr. P.'s child support obligation should be made. The first is adjusting his arrears obligation down to \$50 per month. Reducing the arrears will not have any significant negative effect on C. because all of the arrears are owed to the State of Alaska for public assistance reimbursement.³⁴ Leaving the arrears intact will, however, have a manifestly unjust impact on Mr. P., his wife, and S.'s sister, the minor child living in Mr. P.'s home. Granted, Mr. P. does not have a legal obligation to support his young sister-in-law, so that is the reason he is not entitled to an actual deduction from income for supporting a prior child in the home under Civil Rule 90.3(a)(1)(D). On the other hand, her

³³ Civil Rule 90.3, Commentary VI.E.1.

presence in the home is significant for the obligor and recognizing her importance is thus appropriate in a Civil Rule 90.3(c) good cause finding.

The second method of adjusting Mr. P.'s child support is to leave the ongoing child support obligation mainly intact, but to reduce it by a small amount from \$608 per month to \$500 per month. This will leave intact the bulk of the monthly support amount, the essential portion of Mr. P.'s child support obligation. At the same time it will relieve some of the financial burden on Mr. P. yet it will provide Ms. R. with financial support in the event she goes off public assistance. It should be noted, however, that this adjustment to Mr. P.'s child support is meant to be only a temporary fix. His ongoing child support obligation should not remain at \$500 per month indefinitely because he and S. should be able to retire their debt consolidation in approximately sixteen months.³⁵ This will free up \$500 per month for them at that time, so it may be advisable to consider a modification action soon thereafter.

IV. Conclusion

Mr. P. met his burden of proving by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD. An ongoing child support amount of \$500 per month and arrears of \$50 per month represent a balance of the totality of the circumstances in this case and should be adopted.

V. Child Support Order

- Mr. P. is liable for child support for C. in the amount of \$50 per month for the period from August 2009 through February 2011; and \$500 per month, effective March 1, 2011, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated November 8, 2010, remain in full force and effect.

DATED this 18th day of February, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

³⁴ See AS 25.27.120(a).

³⁵ \$8,000 balance ÷ \$500 per month = 16 months.

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 7th day of March, 2011.

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

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