

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

IN THE MATTER OF	)	OAH No. 10-0605-CSS
J. A. S.	)	CSSD No. 001043192
	)	
_____	)	

**CHILD SUPPORT DECISION AND ORDER**

**I. Introduction**

On January 3, 2011, a formal hearing was held to consider the child support obligation of J. A. S. (Obligor) for the support of his child, T. (Obligee).<sup>1</sup> Mr. S. appeared. The Custodian, C. A. M., also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. S.'s appeal of the Division's modification of his child support order for T. Having reviewed the record in this case and after due deliberation, I concluded the Division's Modified Administrative Child and Medical Support Order issued on November 17, 2010, should be affirmed and Mr. S.'s modified ongoing child support should be set at \$515 per month effective October 1, 2010.

**II. Facts**

**A. History**

Mr. S.'s monthly child support obligation was set at \$437 per month in 2009.<sup>2</sup> The Division reviewed this child support order at Mr. S.'s request.<sup>3</sup> The Division issued a Notice of Petition for Modification on September 13, 2010.<sup>4</sup>

Mr. S. provided income information as ordered.<sup>5</sup> The Division issued a Modified Administrative Child and Medical Support Order on November 17, 2010. The Division determined that Mr. S.'s ongoing monthly child support should be increased to \$515 per month.

---

<sup>1</sup> The hearing was held under Alaska Statute 25.27.190.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

The Division based its calculation of Mr. S.'s modified ongoing monthly child support on his estimated 2010 earnings.<sup>6</sup> Mr. S. requested a formal hearing.<sup>7</sup>

At the hearing, Mr. S. did not contest the Division's calculations or the estimate of his income used in those calculations. Instead, he provided information about his household's financial circumstances and the difficulty he would have paying increased child support. Mr. S. explained that the Division increasing his child support would make his financial situation even more difficult. Mr. S. explained that he is currently ordered to pay \$992 per month for his four younger children under a Florida order.<sup>8</sup>

Mr. S. lives with his wife. There are no children in his home. Mr. S. earns more than \$37,000 per year. Mr. S.'s wife earns \$28,000 to \$30,000 per year. Mr. S.'s household finances are under stress. However, Mr. S.'s household expenses indicate that they could realize some savings if they made some reductions on discretionary expenditures. For example, Mr. S. and his wife spend \$90 per month for internet and cable T.V. Mr. S. estimated that he and his wife spend \$100 per month on entertainment. Mr. S. estimated that he pays \$100 to \$150 per month on alcohol and tobacco.<sup>9</sup>

T. is in college and will become 18 years old in May of 2011, which means that Mr. S. will only have to pay ongoing child support for her for a few more months.<sup>10</sup>

## **B. Findings**

Based on the evidence in the record, I find that it is more likely than not that the Division's calculations at Ex. 5 are correct. I also find that it is more likely than not that the income that the Division used to calculate Mr. S.'s modified child support is the best estimate of his present income.

I find this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. S. did not present clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not reduced.<sup>11</sup>

---

<sup>6</sup> Exhibit 5.

<sup>7</sup> Exhibit 7.

<sup>8</sup> Recording of Hearing- Testimony of Mr. S.

<sup>9</sup> Recording of Hearing- Testimony of Mr. S.

<sup>10</sup> Recording of Hearing- Testimony of Ms. McGrane.

<sup>11</sup> Recording of Hearing.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. S., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>12</sup>

At the hearing, Mr. S. asserted that having to pay \$515 per month in ongoing child support would cause a hardship. Mr. S. does not think he will be able to pay \$515 per month and still make ends meet. Mr. S. provided detailed information about his household's financial situation and asked that his child support be reduced to prevent financial hardship.<sup>13</sup>

Ongoing child support should be calculated based on Mr. S.'s estimated future income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>14</sup>

Mr. S.'s duty to pay the correct percentage of his income toward the ongoing support of his biological child, T., takes precedence over his debts and other financial obligations, including his obligation to support his younger children.<sup>15</sup> Under Alaska Civil Rule 90.3(a) &(c), Mr. S. has an obligation to pay 20% of his adjusted gross income in child support to T. Mr. S. did not show that it would be unjust to require him to pay \$515 per month in ongoing child support. Mr. S. did not show that he and his wife will be unable to support themselves if Mr. S.'s ongoing child support for T. is increased by \$78 per month for the last eight months that he is required to pay ongoing child support for her.<sup>16</sup>

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>17</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.<sup>18</sup> Monthly child support of \$515 would be more than a 15 percent increase from the current order of \$437 per month.

---

<sup>12</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>13</sup> Recording of Hearing- Testimony of Mr. S.

<sup>14</sup> Alaska Civil Rule 90.3(c).

<sup>15</sup> Alaska Civil Rule 90.3 Commentary VI.B.2.

<sup>16</sup> Recording of Hearing.

<sup>17</sup> Alaska Civil Rule 90.3(h)(1).

<sup>18</sup> Alaska Civil Rule 90.3, Commentary X.

A support order cannot be modified retroactively.<sup>19</sup> The effective date of a modification cannot predate the service of the petition for modification, even when a delay in processing a modification request occurred.<sup>20</sup> Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective October 1, 2010, because the petition was served in September of 2010.<sup>21</sup>

#### **IV. Conclusion**

I conclude that the Mr. S.'s ongoing child support should be modified to \$515, effective October 1, 2010, based on his current income in accordance with the Division's Modified Administrative Child and Medical Support Order.

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

The Division's Modified Administrative Child and Medical Support Order issued on November 17, 2010 is affirmed.

DATED this 5th day of January, 2011.

By: Signed  
Mark T. Handley  
Administrative Law Judge

---

<sup>19</sup> Alaska Civil Rule 90.3(h)(2).

<sup>20</sup> *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

<sup>21</sup> Alaska Regulation 15 AAC 125.321.

**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 24<sup>th</sup> day of January, 2011

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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