

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

IN THE MATTER OF)	OAH No. 10-0623-CSS
J. C. H.)	CSSD No. 001095899
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is J. C. H.'s appeal of the Division's modification of his \$262 per month ongoing child support order for his child A., which raised the monthly amount to \$527. On January 4, 2011, a formal hearing was held to consider Mr. H.'s appeal.¹ Mr. H. appeared. The custodial parent, C. B., did not participate. Erinn Brian, 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.

Having reviewed that record and after due deliberation, I have concluded that the Division's Modified Administrative Child and Medical Support Order issued on November 18, 2010, should be adjusted to reflect the updated income information provided by Mr. H.. This means that Mr. H.'s modified ongoing child support should be set at \$433 per month effective October 1, 2010. Mr. H. did not provide clear and convincing evidence showing that his modified ongoing child support needed to be further reduced to avoid a manifest injustice.

II. Facts

A. History

Mr. H.'s monthly child support obligation was set at \$262 per month in 2006.² The Division reviewed this child support order at Ms. B.'s request.³ The Division issued a Notice of Petition for Modification on September 29, 2010.⁴

¹ The hearing was held under Alaska Statute 25.27.190.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 3.

The Division issued a Modified Administrative Child and Medical Support Order on November 18, 2010. The Division determined that Mr. H.'s ongoing monthly child support should be increased to \$527 per month. The Division based its calculation of Mr. H.'s modified ongoing monthly child support on his estimated earnings reported by former employers.⁵

Mr. H. requested a formal hearing.⁶ At the hearing, Mr. H. contested the Division's calculations, explaining that the estimate of his annual income used in the Division's calculations was based on his higher earnings with his prior employer in Alaska. Mr. H. had provided paystubs from his current employer in Texas prior to the hearing. Based on this updated income information, the Division re-calculated Mr. H. support obligation at the hearing and determined that his modified ongoing child support should be set at \$433 per month. Mr. H. also provided information about his household's financial circumstances and complained of the difficulty he would have paying increased child support. Mr. H. explained that the Division increasing his child support would make his financial situation even more difficult.⁷

Mr. H. lives with his wife. They have one new child in their home. Mr. H. earns more than \$31,000 per year. Mr. H.'s wife earned about \$26,000 per year before they moved to Texas and had the new child. Mr. H.'s wife stays at home with the child, but Mr. H. expects that she will eventually seek employment.⁸

B. Findings

Based on the evidence in the record, I find that it is more likely than not that the Division's calculation that based on his current income Mr. H.'s ongoing support obligation under Alaska Civil rule 90.3(a) is \$433 per month is correct.

I find this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H. 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.⁹

⁵ Exhibit 4.

⁶ Mr. H.'s appeal is found at Exhibit 5.

⁷ Recording of Hearing- Testimony of Mr.H.

⁸ Recording of Hearing- Testimony of Mr. H.

⁹ Recording of Hearing.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. H., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. H. met his burden of proving that the Division's order setting modified ongoing child support at \$527 per month was calculated using too much annual income. The child support amount calculated under Civil Rule 90.3(a) based on Mr. H.'s current annual income is \$433 per month.

At the hearing, Mr. H. asserted that having to pay \$433 per month in ongoing child support would cause a hardship. Mr. H. does not think he will be able to pay \$433 per month and still make ends meet. Mr. H. provided detailed information about his household's financial situation and asked that his child support be reduced to prevent financial hardship. Mr. H. sought to avoid any upward modification, but stated that he thought he might be able to afford an increase to \$300 per month.¹¹

Ongoing child support should be calculated based on Mr. H.'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."¹²

Mr. H. did not show that it would be unjust to require him to pay \$433 per month in ongoing child support. Mr. H. did not show that he and his wife will be unable to support themselves and their new child if Mr. H.'s ongoing child support for A. is increased by \$171 per month.¹³

Mr. H.'s household finances are under stress, but there is not clear and convincing evidence that having to pay \$433 per month in child support will cause Mr. H. and the other members of his household to suffer a financial hardship that would be a manifestly injustice. Mr. H.'s take home pay is close to his household expenses including child support; Mr. H.'s wife could seek employment; and Mr. H.'s household expenses indicate that they could realize some savings if they made some reductions on discretionary expenditures. For example, Mr. H. and his wife spend \$49.98 per month for internet and cable T.V.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Recording of Hearing- Testimony of Mr. H.

¹² Alaska Civil Rule 90.3(c).

While paying \$433 per month in ongoing child support may require some difficult adjustments, Mr. H.'s duty to pay the correct percentage of his income toward the ongoing support of his biological child, A., takes precedence over his debts and other financial obligations, including his obligation to support his younger child.¹⁴ Under Alaska Civil Rule 90.3(a) &(c), Mr. H. has an obligation to pay 20% of his adjusted gross income in child support to A.

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.¹⁵ 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.¹⁶ Monthly child support of \$433 would be more than a 15 percent increase from the current order of \$262 per month.

A support order cannot be modified retroactively.¹⁷ 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.¹⁸ 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 2010.¹⁹

IV. Conclusion

I conclude that the Mr. H.'s ongoing child support should be modified to \$433, effective October 1, 2010, based on his current income.

V. Child Support Order

The Division's Modified Administrative Child Support and Medical Support Order issued on November 18, 2010, is amended as follows, all other provisions remain in effect:

- Mr. H.'s modified ongoing child support is set at \$433 per month, effective October 1, 2010,

¹³ Recording of Hearing.

¹⁴ Alaska Civil Rule 90.3 Commentary VI.B.2.

¹⁵ Alaska Civil Rule 90.3(h)(1).

¹⁶ Alaska Civil Rule 90.3, Commentary X.

¹⁷ Alaska Civil Rule 90.3(h)(2).

¹⁸ *State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

¹⁹ Alaska Regulation 15 AAC 125.321.

- The Division will give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for A.

DATED this 5th day of January, 2011.

By: Signed
Mark T. Handley
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 24th 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.]