

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

IN THE MATTER OF:)
)
E. B.) OAH No. 11-0034-CSS
) CSSD No. 001158845
_____)

DECISION AND ORDER

I. Introduction

The obligor, E. B., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The obligee child is A. The custodial parent is A. K.

A hearing was held on February 15, 2011. Mr. B. appeared in person. Ms. K. appeared by telephone. CSSD was represented in person by Child Support Specialist Andrew Rawls. At the conclusion of the hearing the record was left open until February 22, 2011, to allow CSSD time to submit a revised support calculation based on the current income of Mr. B. Based on the testimony and exhibits in the record, Mr. B.'s child support is modified to add an additional child. His child support is set at \$157 per month for one child, effective December 1, 2010, pursuant to Civil Rule 90.3(c).

II. Facts

A. Background¹

In February of 2010, the Office of Administrative Hearings held a hearing and issued a decision setting the child support obligation of Mr. B. for one child, N.² Ms. K. has withdrawn from services for N.³ In November of 2010, CSSD notified Mr. B. of its intent to add a second child, A., to Mr. B.'s child support obligation.⁴ A Petition for Modification of Administrative Support Order was issued on November 18, 2010.⁵ A modified order was issued on January 10,

¹ Factual findings are based on Mr. B.'s testimony unless otherwise indicated.
² Exhibit 1; *In re E.B.*, OAH No. 09-0693 (Alaska Commissioner of Revenue 2010).
³ Exhibit 6.
⁴ Exhibit 2.
⁵ Exhibit 3, page 2.

2011.⁶ Mr. B. appealed that order, stating that he could not afford the amount ordered based on his current income and expenses.⁷

After the hearing, CSSD submitted a post hearing brief with additional exhibits which recalculated Mr. B.'s support obligation.

B. Material Facts

Mr. B. and Ms. K. are the parents of two children.⁸ The older child, N., is about three years old. N. is blind and receives SSI payments on her own behalf. Ms. K. does not receive any public assistance for N.⁹ The parties' second child, A., is about six months old, and Ms. K. does receive public assistance for A.¹⁰

Mr. B. owns a mobile home, and pays space rent for that home. He also owns some property in Peters Creek and hopes to be able to build a home on that property at some point in the future. His total monthly expenses average about \$1,870.

Mr. B. is currently working for a restaurant where he has a variety of duties, including dishwashing and food preparation. He submitted several recent pay stubs which show that he earns \$8.50 per hour, and \$12.75 per hour when he works overtime.¹¹ Mr. B. testified that he works six days a week. He works from late afternoon through the evening, and spends most mornings with his children. During four consecutive pay periods beginning on December 12, 2010 and ending January 30, 2011, Mr. B. earned a total of \$2,896.38.¹² This equates to an income of \$18,826.47 per year.¹³ When that amount, along with a Permanent Fund Dividend payment is entered into CSSD's child support calculator, the resulting support obligation is \$232 per month for one child and \$313 per month for two children.¹⁴

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Mr. B. also has a 14 year old son from a prior relationship living with him.

⁹ CSSD Prehearing Brief, page 1.

¹⁰ *Id.*

¹¹ Exhibit A & Exhibit 7.

¹² Exhibit 8.

¹³ $\$2,896.38 \div 4 \times 26$ pay periods per year = \$18,826.47.

¹⁴ Exhibit 8, page 2.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁵ 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."¹⁶ 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.¹⁷ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁸

CSSD has essentially agreed that the original decision was incorrect because it has now submitted a new calculation based on Mr. B.'s actual income. Mr. B.'s actual income is expected to be \$18,826.47 per year. Based on this income, his support obligation for two children is \$313 per month.

Calculating the total amount that Mr. B. is obligated to pay towards the support of these two children is not complicated. However, the fact that CSSD is only collecting for one of those two children does create an unusual circumstance under Civil Rule 90.3(c). Typically, a custodial parent seeks service for all or none of the children in his or her custody. If a custodial parent is receiving public assistance, he or she is receiving that assistance for all of the children. Here, the State of Alaska is entitled to recoup child support payments based on providing public assistance for A.. It is Ms. K. who is entitled to receive payments for the support of N., but she has chosen to withdraw from CSSD services for N. because N. receives Social Security benefits. There does not appear to be any guidance in Civil Rule 90.3 or in the Department's regulations for determining what support amount the State should receive vs. the amount Ms. K. should receive.

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁶ AS 25.27.190(e).

¹⁷ 15 AAC 125.321(d).

¹⁸ 15 AAC 05.030(h).

Mr. B.'s payment to CSSD to support A. could be the amount he would owe for one child, as was suggested in CSSD's pre-hearing brief. It could be the incremental increase in the child support obligation from one child to two children, as was suggested by CSSD at the hearing. Finally, the amount could be 50% of the total amount due for two children. As discussed below, the third option most closely follows the intent of Civil Rule 90.3.¹⁹

The Commentary to Civil Rule 90.3 points out that Rule 90.3 uses a percentage of income approach in determining child support obligations. The percentages are based on an economic analysis of what parents typically spend on children when families are intact.²⁰ Application of the rule is intended to result in a non-custodial parent paying the amount of support that he or she would have devoted towards supporting the children in an intact family.²¹

Civil Rule 90.3 sets the amount of a child support award at 20% of the obligor parent's adjusted income for one child and 27% for two children.²² This does not mean, however, that families typically devote 20% of their income to their first child, and only 7% to their second child. Instead, it costs families about 20% of their income when there is one child in the household. It costs them about 27% of their income when there are two children, but that cost is spread in roughly equal amounts between the children.²³ In this case, Ms. K. has a certain level of expenses because she is the custodial parent of two children. If CSSD was collecting the full amount of child support owed by Mr. B., and paying that amount to Ms. K., she would use half of the total in supporting N. and half of the total in supporting A. Because CSSD is only collecting for one child, however, the amount it collects should be one-half of the total support obligation. Mr. B. should be paying the other one-half directly to Ms. K.²⁴

IV. Conclusion

Based on his current employment, Mr. B. can be expected to earn \$18,826.47 per year. His support obligation is calculated at \$313 per month for two children and \$232 per month for

¹⁹ The Department may wish to consider adopting regulations to address this issue.

²⁰ Civil Rule 90.3, Commentary II.

²¹ *Id.*

²² Civil Rule 90.3(a)(2).

²³ Typically, the older child does not consume three times more rent, heat, electricity, food, or clothing than the younger child.

²⁴ If he is making payments, he should be keeping receipts acknowledging payment. If he is not making payments, or not keeping receipts, arrears could be building which would be collectable in the future if Ms. K. applies for services from CSSD.

one child. However, pursuant to the unusual circumstances provisions of Civil Rule 90.3(c), the one-child amount should be varied to \$157 per month, which is one-half of the two children amount, because CSSD is providing services only for A., and not for N.

V. Child Support Order

- Ongoing child support is set at \$313 per month, effective December 1, 2010, for two children, and \$157 per month for one child, with CSSD collecting the one-child amount for the benefit of A.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 10, 2011, remain in full force and effect.

DATED this 22nd day of February, 2011.

By: Signed
Jeffrey A. Friedman
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 16th day of March, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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