

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

IN THE MATTER OF:)
)
 R. D. S.) OAH No. 11-0113-CSS
) CSSD No. 001162660
_____)

DECISION AND ORDER

I. Introduction

The obligor, R. D. S., appeals an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The custodial parent is J. L. K., and the obligee children are M. E. S. and Z. N. S.

A hearing was held on April 20, 2011. Mr. S. appeared by telephone, CSSD was represented by Child Support Specialist Erinn Brian, and Ms. K. was also present. At the conclusion of the hearing, Mr. S. indicated that he would submit his most current paystubs by April 22, 2011, and the record was kept open to allow CSSD to re-calculate Mr. S.'s support obligation based on that additional information. Mr. S. did not submit his paystubs, and the record is now closed.

Based on the testimony and other information in the record, Mr. S.'s child support obligation is set at \$701 per month during 2010 and \$721 per month effective January 1, 2011.

II. Facts

A. Background

CSSD issued an Administrative Child Support and Medical Support Order on October 20, 2010.¹ This order set Mr. S.'s child support obligation at \$656 per month for two children. Mr. S. was served with this order on January 7, 2011.² Mr. S. requested an administrative review of the order and also requested genetic testing to determine if he was the biological father of these children.³

¹ Exhibit 3, page 1.
² Exhibit 3, page 11.
³ Exhibit 4.

On March 10, 2011, CSSD issued an Administrative Review Decision.⁴ This decision left the child support amount the same. The review decision also indicated that the request for genetic testing had been previously denied.⁵ Mr. S. appealed and requested a formal hearing. His appeal states that he is not earning as much as he had earned in the past and could not afford the support obligation calculated by CSSD.⁶

B. Material Facts

Mr. S. currently works in the shipping and receiving department at No Name Store. He testified that he works about 60 to 75 hours per week, earning \$15.10 per hour.⁷ He previously held a second job as a cook for the No Name Restaurant, working 30 hours per week at \$11.75 per hour. Mr. S. testified that he was recently suspended from that job because of an injury.

The Department of Labor records indicate that Mr. S. has consistently held a second job as a cook, in addition to his job at No Name Store.⁸ He earned a total of \$43,732.64 during 2010.⁹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹¹

The amount of a child support award can be reduced if the obligor shows by clear and convincing evidence that manifest injustice would occur if the support award is not reduced.¹² Mr. S. testified about his monthly expenses. He currently shares many of his living expenses with a roommate, so his rent is \$485 per month, and his utility bills total \$100 per month, including his cell phone charges. He purchased a used vehicle in 2008, and pays \$316 per month on that loan. He spends up to \$150 per month on gasoline. His car insurance is \$120 per month,

⁴ Exhibit 6.

⁵ The order denying the genetic testing is not in the Office of Administrative Hearings record.

⁶ Exhibit 7.

⁷ Until recently, he earned \$14.80 per hour.

⁸ Exhibit 8.

⁹ *Id.*

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ 15 AAC 05.030(h).

¹² Civil Rule 90.3(c).

and in the summer he pays an additional \$53 per month for insurance on his motorcycle. Based on Mr. S.'s testimony, his other expenses total about \$500 per month. He also has about \$8,000 in debt that he is not currently paying.

Looking at Mr. S.'s W-2 statements from 2009,¹³ his take home pay was about \$400 more per month than his current expenses. His total 2010 income, before tax, was about \$10,000 more than his 2009 income.¹⁴ Accordingly, Mr. S. has not shown by clear and convincing evidence that it would be manifestly unjust to calculate his child support obligation pursuant to Civil Rule 90.3(a). He may have to reduce some of his discretionary spending to meet that obligation, but it is not unjust to require him to do that.

According to Department of Labor information, Mr. S.'s actual income in 2010 was \$43,732.64. That figure should be used to calculate his support obligation for 2010. This results in a support obligation of \$519 per month for one child and \$701 per month for two children.¹⁵

His 2011 and ongoing support obligation should be based on the amount he is expected to earn when the child support is to be paid.¹⁶ CSSD determined that Mr. S.'s 2010 income is the best predictor of what he will earn in 2011, and calculated his support obligation based on that amount. Mr. S. has not demonstrated that CSSD's determination was incorrect. Although he recently lost his second job as a cook, there is no evidence that he won't be able to find a different, equivalent job in the near future. In addition, that job loss is partially offset by his recent increase in pay at Nordstrom. Using Mr. S.'s 2010 income for his 2011 and ongoing, support obligation results in a child support obligation of \$534 per month for one child and \$721 per month for two children.¹⁷

IV. Conclusion

Mr. S. has not met his burden of proving that CSSD's calculation of his child support obligation was incorrect, or that it would be manifestly unjust to calculate his child support obligation pursuant to Civil Rule 90.3(a). His child support obligation should be based on his actual income for 2010.

¹³ Exhibit 2, page 4 and page 6.

¹⁴ Exhibit 8.

¹⁵ Exhibit 9, page 1. This calculation give him a credit of \$437 per month for child support paid for a child from a prior relationship.

¹⁶ Civil Rule 90.3, Commentary III.E.

¹⁷ Exhibit 9, page 2.

V. Child Support Order

- Mr. S.'s child support obligation for 2010 is set at \$701 per month for two children;
- Effective January 1, 2011, Mr. S.'s ongoing child support obligation is set at \$721 per month for two children.
- All other provisions of the October 20, 2010 Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 3rd day of May, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

ADOPTION

3. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

Page 2, Paragraph 2, second sentence of B. Material Facts should read: “He testified that he worked about 60 to 75 hours every two weeks, earning \$15.10 per hour.”

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 25th day of May, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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