

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

IN THE MATTER OF:)
)
 J. A.) OAH No. 11-0151-CSS
) CSSD No. 001170411
_____)

DECISION AND ORDER

I. Introduction

J. A. appeals an Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD). The child support services are on behalf of S. N., and the custodian of record is M. N. Mr. A. and Ms. N. both appeared by telephone. CSSD was represented by Child Support Specialist Erinn Brian, who also appeared by telephone.

Based on the evidence in the record, Mr. A.'s child support obligation should be set at \$437 per month for 2010, and at \$358 per month for one child as of January 1, 2011.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued on January 20, 2011.¹ Mr. A. requested an administrative review of that order.² An Amended Administrative Child and Medical Support Order was issued on April 4, 2011.³ Mr. A. appealed that decision.⁴ He raised three points in his appeal. First, he noted that he was seeking shared legal and physical custody of S.⁵ Second, he noted that the income figures used by CSSD were too high. Finally, he questioned the policy of not treating all of his children equally in terms of the amount of support he was expected to provide for each. At the hearing, Mr. A. also requested that his obligation be reduced due to financial hardship.

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¹ Exhibit 2.

² Exhibit 3.

³ Exhibit 6.

⁴ Exhibit 7.

⁵ Custody issues may not be addressed in this proceeding. If custody changes, Mr. A. may seek a modification of his child support obligation.

B. Material Facts

Mr. A. lives in No Name City and works for the State of Alaska as an electrician.⁶ He earned \$46,257 from that job in 2010.⁷ He also earned \$11,000 from a business he co-owned with his father,⁸ though he is no longer operating that business.⁹ He is the sole wage earner in his family. His wife does not work outside of the home because child care would cost more than she could earn. He and his wife have 6 children, five of whom are older than S.¹⁰

Mr. A. testified that his mortgage payment is \$1,421 per month and his utilities total \$1,028 per month. He spends about \$500 per month on food. He owns two vehicles, a Ford Excursion and a Ford Expedition. The payments for both vehicles total \$980 per month. He spends about \$700 per month on gasoline. His insurance payment is \$196 per month, and he is also paying \$500 per month on a business loan. Thus, his expenses total \$5325 per month, or \$63,900 per year.

Ms. N. testified that she earns about \$3,500 per month in wages, and receives an additional \$1,400 per month in rent from the other half of the duplex she owns. She is also receiving \$726 per month in child support payments for two older children. The amount of money available to her is about \$5,626 per month, or \$67,512 per year.

Ms. N. has four children living in her home.¹¹ Her mortgage is \$2,659.25 per month, and her utilities total about \$1,029 per month. She spends an average of \$750 per month on food.¹² Ms. N. also owns a Ford Expedition, and the payment on that vehicle is \$648 per month. She spends about \$450 per month on gasoline, and another \$138 per month on insurance. She pays an average of about \$700 per month for child care.¹³ Ms. N. has about \$14,000 in credit card debt, and is paying about \$500 per month towards that debt. Her total expenses, therefore, are about \$6,874.25, or \$82,491 per year.

⁶ A. testimony.

⁷ Exhibit 8; A. testimony.

⁸ Exhibit 4, page 2.

⁹ A. testimony.

¹⁰ A. testimony.

¹¹ N. testimony.

¹² She testified that her food cost \$500 to \$1000 per month.

¹³ She testified that the cost was \$600 to \$800 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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 total income is adjusted to account for by the cost of supporting children from a prior relationship. When those children are living in the obligor's home, the amount of the adjustment is calculated using the Civil Rule 90.3 formula.¹⁵

In 2010, Mr. A. earned a total of \$57,257.08. As shown in Attachment C, the Civil Rule 90.3 calculation for five children results in a support obligation of \$1,382 per month.¹⁶ This amount is deducted from Mr. A.'s income before calculating the child support obligation for S. Based on Mr. A.'s adjusted income, the Civil Rule 90.3 calculation for his 2010 child support obligation is \$437 per month for one child.¹⁷

Mr. A.'s income was lower in 2011 because he is no longer earning income from his business. He is still entitled to a credit for the five older children living in his home. As shown in Attachment A, the Civil Rule 90.3 calculation for five children results in a support obligation of \$1,145 per month. This amount is deducted from Mr. A.'s income before calculating the child support obligation for S. Based on Mr. A.'s adjusted income, the Civil Rule 90.3 calculation for his ongoing child support obligation is \$358 per month for one child.¹⁸

Mr. A. has asked that his child support obligation be reduced because paying it would create a hardship for himself and his other children. A child support award can be varied if there is clear and convincing evidence that manifest injustice would occur if the support award was not varied.¹⁹ This determination requires an examination of the custodial parent's circumstances as well as the obligor's circumstances.

In this case, both parents are spending more each month than they earn. Neither of them appear to have extravagant expenses given the higher cost of living in No Name City. Ms. N. is

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ Civil Rule 90.3(a)(1)(D)

¹⁶ Support is calculated as 20% for the first child, an additional 7% for the second child, and an additional 3% for each of the remaining children. Civil Rule 90.3(a)(2). These percentages are based on economic data that indicates the amount of income parents typically devote to caring for their children in an intact family. Civil Rule 90.3, Commentary II.

¹⁷ Attachment D. This is 20% of Mr. A.'s adjusted income.

¹⁸ Attachment B.

¹⁹ Civil Rule 90.3(c)(1).

currently engaged. After her marriage, her financial circumstances may change. Until then, however, she needs child support payments in order to properly care for Mr. A.'s daughter S., along with the other children in her home. Mr. A. also has several other children to support. This child support obligation will put an additional strain on his finances. His family will, however, be eligible for eight permanent fund dividend checks, which will help alleviate the financial pressures. He may also be able to reduce some of his expenses by trading in one of the two large vehicles the family currently uses. Mr. A. has not met his burden of proving by clear and convincing evidence that it would be manifestly unjust to calculate his child support obligation pursuant to Civil Rule 90.3(a).

IV. Conclusion

For 2010, Mr. A.'s child support obligation should be set at \$437 per month. For 2011, Mr. A.'s child support obligation should be set at \$358 per month for one child. He has not met his burden of proving by clear and convincing evidence that manifest injustice would result from having his support obligation set at this level.

V. Child Support Order

- Mr. A.'s child support obligation is set at \$437 per month from September 1, 2010 through December 31, 2010.
- Mr. A.'s ongoing child support obligation is set at \$358 per month effective January 1, 2011;
- All other provisions of the Amended Administrative Child and Medical Support Order of April 4, 2011 remain in full force and effect.

DATED this 9th day of May, 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 27th day of May, 2011.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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