

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

IN THE MATTER OF:)

S E K)

) OAH No. 11-0242-CSS

) CSSD No. 001167456

DECISION AND ORDER

I. Introduction

This case involves the obligor S E K's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 25, 2011. The obligee child is J, who is four years old. The custodian is M S. F.

The hearing was held on September 15, 2011. Mr. E K appeared in person with counsel; Ms. F participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. E K's child support is set at \$866 per month, effective April 2010, and ongoing. Mr. E K's petition for a variance based on financial hardship pursuant to Civil Rule 90.3(c) is denied.

II. Facts

A. Procedural Background

Ms. F applied for child support for J in her state of residence on March 24, 2010,¹ and the petition was transmitted to CSSD. CSSD initiated a child support action for Mr. E K and subsequently issued an Amended Administrative Child and Medical Support Order that set Mr. E K's ongoing child support at \$848 per month, with arrears of \$11,322 for the period from April 2010 through May 2011.² Mr. E K filed an appeal, asserting he pays support for more than one child.³

*B. Material Facts*⁴

Ms. F was previously married to J M. L.⁵ Mr. L was J's presumed father. On February 8, 2008, Ms. F and Mr. L jointly executed a document in the State of Texas denying Mr. L'

¹ Exh. 1 at pg. 4.

² Exh. 6.

³ Exh. 7.

⁴ The material facts are taken from Mr. E K's hearing testimony or the documentary evidence, as cited.

paternity of J.⁶ On the same date, Mr. E K and Ms. F jointly executed an acknowledgment of paternity in which, under penalty of perjury, they declared that Mr. E K is J's biological father.⁷ J was born in Texas on May 22, 2008, and Mr. E K's name was placed on the child's Texas birth certificate.⁸

Mr. E K is an E-5 in the military with approximately 8 years of service.⁹ He was deployed overseas when J was born in 2008.¹⁰

Mr. E K's 2010 base pay, on an annual basis, totaled \$31,006.80.¹¹ In addition, on a monthly basis he received non-taxable benefits consisting of Basic Allowance for Subsistence (BAS) of \$323.87; Basic Allowance for Housing (BAH) of \$1,862.00; and Cost of Living Allowance (COLA) of \$19.93 per day.¹² When annualized, all of his wages and entitlements for 2010 total \$64,511.69.¹³ When inserted into CSSD's online child support calculator, this income figure yields a support amount of \$866 per month.¹⁴

Mr. E K's child support calculation includes a deduction from income totaling \$600 per month for the child support he pays for two older children. Mr. E K pays \$300 per month for an older son named B to his mother, C Y. A.¹⁵ He also pays support of \$300 per month for an older daughter named N to Y Q.¹⁶

Mr. E K lives with his wife and her child from a prior relationship. Mr. E K reported regular expenses of \$1,650 for rent; \$700 for food in the home; \$150 for eating out; \$17 for trash pickup; \$76.68 for electricity; \$87.37 for telephone and Internet; \$63.98 for cable; \$193.72 for cell phone service; \$550 for the payment on a 2005 Acura; \$284 for the insurance on two

⁵ Exh. 12 at pg. 1.

⁶ *Id.*

⁷ Exh. 12.

⁸ Exh. 10.

⁹ Exh. 5 at pg. 2.

¹⁰ Testimony of Mr. E K and Ms. F.

¹¹ Exh. 8 at pgs. 1-2.

¹² *Id.*

¹³ *Id.*

¹⁴ Exh. 8 at pg. 1.

¹⁵ C A wrote that Mr. E K's payment is \$700 per month, but the receipts from November 2010 through April 2011 show he sent \$300 per month. Exh. 5 at pgs. 4-6.

¹⁶ Exh. 5 at pg. 7.

vehicles; a varied amount for vehicle maintenance; \$200 for personal care items; and \$294 for the payments on two credit cards with balances totaling about \$5,700.¹⁷

Ms. F is also an E-5 in the military. She has two children in the home – the obligee J, and another child born in June 2011. Ms. F reported regular expenses of \$1,069 for rent; \$500 for food; \$80 for water service; \$140 for electricity; \$220.68 for cable, home telephone and Internet; \$155 for cell phone service; \$460 for the payment on a 2010 Volkswagen Jetta; \$180 for gasoline; \$48 for vehicle maintenance; \$180 for vehicle insurance; \$8 for entertainment; \$130 for the payment on a credit card; \$320 for the payment on a loan; and \$980 for child care.¹⁸

III. Discussion

Mr. E K filed the appeal in this matter. He is challenging: 1) the determination that paternity of J has been established; 2) the amount of the deduction for supporting two prior children; and 3) the inclusion of his military non-income benefits into his total income for the child support calculation. As the party who filed the appeal, Mr. E K has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.¹⁹

A. Mr. E K's Paternity of J Has Been Established

Mr. E K argues that paternity of J has not been established. Mr. E K asserts that CSSD cannot rely on the Texas birth certificate naming him as J's father.²⁰ He claims that Maryland, the initiating state in this case, requested that CSSD establish paternity, and that CSSD must do so before establishing his child support obligation.

At the hearing in this matter, CSSD filed a copy of J's Texas birth certificate.²¹ The birth certificate named Mr. E K as J's father. Mr. E K asserted that this birth certificate was issued solely as the result of representations made to the Texas authorities by Ms. F, and that he had not had any input into the information that resulted in the issuance of J's birth certificate.²²

Mr. E K's testimony that he had no involvement in the issuance of J's birth certificate is not credible. After the hearing, CSSD filed copies of documents executed on February 8, 2008,

¹⁷ Obligor's Exh. D at pg. 1.

¹⁸ Exh. 11, submitted by Ms. F after the hearing.

¹⁹ 15 AAC 05.030(h).

²⁰ See DeK' Additional Exhibits and Closing Brief at pg. 3.

²¹ Exh. 10.

and submitted to the Texas Department of State Health Services, Vital Statistics Unit on the same day, that serve as the source information for J's birth certificate. Those documents consist of a denial of J's paternity executed by Ms. F and J M. L, J's presumed father,²³ and an acknowledgment of J's paternity signed by both Mr. E K and Ms. F.²⁴

Under Texas law, Mr. E K's acknowledgement of paternity created the parent-child relationship between Mr. E K and J.²⁵ This is sufficient to find that Mr. E K's paternity of J has been established for purposes of this administrative child support action. However, even if there were lingering questions about the circumstances under which J's birth certificate was generated, CSSD is required to give "full faith and credit to a determination of paternity made by another state, whether established through voluntary acknowledgment or through administrative or judicial procedures."²⁶ Therefore, CSSD is not required to initiate proceedings to establish Mr. E K's paternity – this has already been accomplished in Texas. Any challenge Mr. E K wants to make of J's Texas birth certificate would have to be made in that state.

B. Deduction for Prior Children²⁷

The issue Mr. E K raised regarding a deduction from income for paying support for prior children has not been contested by CSSD. The only portion of this issue remaining to be decided concerns the actual amount of the deduction.

Mr. E K pays support for two prior children, B and N, in the amount of \$300 per month for each child, which totals \$600 per month.²⁸ B's custodian, C A, wrote that the obligor pays \$700 per month for "alimony", but the receipts indicate he is paying \$300 per month. The additional \$400 may be attributed to an "alimony" portion of the total payment, but without additional evidence explaining the discrepancy, Mr. E K is not entitled to a deduction that exceeds the amount reflected on the receipts he provided. The receipts for N's support indicate he also pays \$300 per month on her behalf, so the total amount of the monthly deduction to which he is entitled is \$600. CSSD's amended order gave Mr. E K a deduction for \$700 per

²² Testimony of Mr. E K; *see also* E K' Additional Exhibits and Closing Brief at pg. 3.

²³ Exh. 12 at pg. 1.

²⁴ Exh. 12 at pg. 2.

²⁵ Texas Uniform Parentage Act § 160.302(a) & § 160.201(b)(2).

²⁶ AS 25.20.050(h).

²⁷ *See* Civil Rule 90.3(a)(1)(C).

²⁸ Exh. 5 at pgs. 4-7.

month, but in its final proposed calculation, CSSD reduced the amount to \$600.²⁹ This figure is correct and should be included in the calculation of his support obligation.

C. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.³⁰ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).³¹ In this case, Ms. F requested child support services in her state of residence on March 24, 2010, so April 2010 is the first month Mr. E K is obligated to pay support in this administrative child support action.³²

Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."³³ The base pay figure is put into the worksheet in the taxable income section.³⁴ The other benefits go into the non-taxable income section.³⁵ If the soldier lives off base, the BAH benefit used is the actual monetary amount included in the soldier's pay and reflected in the Leave and Earnings Statement (LES). If the soldier lives rent-free in base housing, the housing allowance is treated as an in-kind contribution, and its value, for child support purposes, is considered to be the same amount the soldier would receive for BAH while living off base.³⁶ The reason for including the non-pay benefits in the calculation, especially the BAH, is because they reduce the parent's living expenses and allow a military member to use the remainder of his or her cash pay to cover other expenses.

Prior to the hearing, CSSD revised the calculations for 2010 and 2011.³⁷ They resulted in child support amounts of \$866 per month for 2010 and \$900 per month for 2011.³⁸ These two amounts are correct because they are based on Mr. E K's actual income figures and are

²⁹ See Exh. 8 at pg. 1.

³⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

³¹ 15 AAC 125.105(a)(1)-(2).

³² See Exh. 1.

³³ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

³⁴ See Exh. 10 at pg. 2.

³⁵ *Id.*

³⁶ See Civil Rule 90.3, Commentary III.A.19.

³⁷ See Exh. 8.

³⁸ Exh. 8 at pgs. 1, 3.

calculated pursuant to Civil Rule 90.3, the rule that directs how child support is to be calculated in Alaska. However, because the 2011 figure is not at least 15% higher than the 2010 figure, the \$866 per month amount for 2010 should carry forward into 2011 as well.³⁹

D. Financial Hardship

The other issue in this appeal is whether Mr. E K is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). His child support is now correctly calculated at \$866 per month, beginning in April 2010. It is from this figure that Mr. E K's request for a variance based on financial hardship should be considered. He maintains that he cannot afford the monthly support amount, especially given that he has two older children to support. In response, CSSD proposed that Mr. E K's child support should be *increased* to reflect the fact that Ms. F pays \$980 per month in day care. CSSD argues that she should not have to be responsible for the entire amount.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."⁴⁰ The presence of "unusual circumstances" in a particular case also may be sufficient to establish "good cause" for a variation in the support award.⁴¹

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).⁴²

The establishment of this child support order has undoubtedly created stress for Mr. E K and his family, especially given that he and his wife support her child from a prior relationship in the home. Ms. F is also in the military. Thus, though she would have income and benefits roughly commensurate with Mr. E K's, she is the only adult present in her household to earn an income. Moreover, Mr. E K obviously feels a moral imperative to support his stepchild, but he

³⁹ See Civil Rule 90.3(h)(1).

⁴⁰ Civil Rule 90.3(c).

⁴¹ Civil Rule 90.3(c)(1).

⁴² See Civil Rule 90.3, Commentary VI.E.1.

has a legal obligation to support his biological child, J. Mr. E K's duty to his biological child takes priority over other debts and obligations.⁴³ J is entitled to receive child support in an amount commensurate with Mr. E K's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been determined.

Based on the evidence in its entirety, Mr. E K's situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. He did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for J were not reduced. Mr. E K's child support should not be varied downward, but also, it should not be varied upward. CSSD's claim that the support amount should be raised simply because it is lower than Ms. F's day care bill is not persuasive.

IV. Conclusion

Mr. E K met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h), because he established that his 2010 and ongoing child support should be recalculated. The calculation is based on his actual income and includes a deduction for the support he pays for two prior children. However, Mr. E K did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced from \$866 per month, and he is thus not entitled to a variance from the amount calculated. Mr. E K's child support is correctly calculated at \$866 per month, effective April 2010 ongoing. This figure should be adopted.

V. Child Support Order

- Mr. E K is liable for child support for J in the amount of \$866 per month, effective April 2010 and ongoing;
- All other provisions of CSSD's Amended Administrative Child Support and Medical Support Order, dated May 25, 2011, remain in full force and effect.

DATED this 22 day of May, 2012.

By: Signed _____
Kay L. Howard
Administrative Law Judge

⁴³ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 18th day of June, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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