

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

IN THE MATTER OF)	
L C. E)	OAH No. 11-0267-CSS
)	CSSD No. 001167810
_____)	

DECISION AND ORDER

I. Introduction

This case is N E. N’s appeal of an order issued by the Child Support Services Division (Division), which denied Ms. N’s request to increase L C. E’s ongoing monthly child support obligation. The order being appealed is the Division’s Denial of Modification of Administrative Support Order, which denied Ms. N’s petition for an upward modification of Mr. E’s ongoing child support order for their four children, K, R, A, and J. This order was issued on June 18, 2011.

On July 21, 2011, a hearing was held to consider Ms. N’s appeal. Ms. N, the custodial parent in this case, participated. Mr. E also participated. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist. After that hearing a post hearing order was issued and the hearing was scheduled to be continued on August 16, 2011. Ms. N did not participate in the August 16, 2011 portion of the hearing because there was no answer at either of her phone numbers of record at the time for the hearing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be overturned. Mr. E’s ongoing child support obligation for K, R, A, and J should not remain at \$50 per month, because there has been a change in the parties’ circumstances that would justify a modification of child support. There is also clear and convincing evidence in the record that in order to avoid injustice, Mr. E’s ongoing child support for all his eight children should give each child an eighth of an eight-child-order. That order should be calculated using Mr. E’s current income. This approach results in a total ongoing child support obligation of \$380 per month for all eight children, which is 48% of Mr. E’s

adjusted monthly income. This amounts to \$47.50 per month for each child, or \$190 per month for K, R, A, and J, the four children covered by this order. Mr. E will need to request modifications of his other child support orders if he wishes to have them lowered.

II. Facts

This case is a modification action.¹ The Division denied Ms. N's request for modification review because the Division determined that there would not be a 15% change in Mr. E's ongoing child support amount based on Mr. E's reported earnings. Mr. E's current ongoing child support was set at the minimum of \$50 per month in 2010 based on no reported 2009 earnings plus a PFD. Mr. E still had no reported annual earnings since 2008 when the Division denied modification.²

After the Division denied her request for an upward modification, Ms. N requested a formal hearing. In her request for a formal hearing, Ms. N explained that she needed more child support because recently she has only been able to work part-time.³

At the hearing, Mr. E explained that he earns \$8000 per year on contract doing airport maintenance for the Alaska Department of Transportation. The Division was not aware of this income when it denied the modification. Mr. E lives in a remote village on the west coast of Alaska. Mr. E does subsistence fishing but does not fish commercially. Mr. E testified that he is currently living with his daughter, R. Mr. E has a total of eight biological children with three different mothers. In addition to the \$50 order for the four children in this case, Mr. E has two other child support orders that require him to pay \$662 per month. One of the children in this case is older than some of the children in the other cases. Three of the children in this case are younger than the four children in the other cases.⁴

After the hearing, as ordered, the Division provided new calculations based on the updated income information. These calculations resulted in an ongoing child support amount of \$101.96 for the four children of this order, K, R, A, and J.⁵ At the hearing, an error was discovered

¹ Alaska Civil Rule 90.3(h) governs modification actions.

² Recording of Hearing & Exhibits 1-4.

³ Exhibit 5.

⁴ Recording of Hearing-Testimony of Mr. E.

⁵ Recording of Hearing & Exhibits 8-11.

in this calculation. The corrected amount is \$79.83 per month for the four children of this order. The monthly amount for the children of this order is reduced by the disproportionately large amount that Mr. E's is required to pay for his other four children.⁶

After the hearing, the Division provided a new eight-child calculation using Mr. E's current annual income. This calculation results in a monthly child support obligation of \$380 for eight children. If this amount is shared equally by the children, each child receives \$49.50 per month. This means that the four children in this order would receive \$190 per month if this approach is applied.⁷

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. N, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁸ At the hearing, Ms. N showed that the Division's determination that there had not been a material change in circumstance that would justify a modification of ongoing child support was incorrect.⁹ Ms. N is entitled to an increase in her ongoing child support for K, R, A, and J.

There is also clear and convincing evidence in the record of unusual circumstances in this case. Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹⁰ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹¹ Good cause includes a finding of unusual circumstances.¹²

To understand the unusual circumstances of this case, one must consider the full extent of Mr. E's obligation to support children of different relationships. Mr. E has eight children with three different mothers. He may support one child in his home as a single parent with no assistance or financial support from the child's mother. He also has three separate child support orders, including this one.

⁶ Recording of Hearing & Exhibits 8-10.

⁷ Recording of Hearing & Exhibit 11.

⁸ Alaska Regulation 15 AAC 05.030(h).

⁹ Recording of Hearing & Exhibit A.

¹⁰ Alaska Civil Rule 90.3(a)(1)

¹¹ Alaska Civil Rule 90.3(c).

¹² Civil Rule 90.3(c)(1)(A).

Alaska Civil Rule 90.3(a)(2) appears to recognize the hard reality that it becomes progressively less just and more counter-productive to attempt to charge a noncustodial parent much more than 33% of his or her adjusted income for ongoing child support. This recognition is reflected in the Rule's reduction of the increased additional support for each child after the third child to a mere 3% of the obligor's adjusted income.

Strict adherence to the support guidelines of Civil Rule 90.3(a) for so many children with the same non-custodial parent and different custodial parents has resulted in a total support obligation far in excess of anything reasonable or collectable, and clearly works an injustice to the children of this order and any child living in Mr. E's household.

The oldest children receive a percentage of Mr. E's adjusted income with no deduction for the other children, under Civil Rule 90.3(a). The second set of children would then receive a percentage of what is left after deductions for older children. The third set of children would have to get by on a percentage of what little that remained. Even this complicated and unjust distribution of the available income would not quite follow Civil Rule 90.3(a) because one of the children in the one set is older than one of the children in another, and one child of this case may be living with him. Furthermore some of these orders appear to have been set when Mr. E was making significantly more income than he is now. Mr. E and Ms. N both live in a remote village where employment opportunities are very limited.

Manifest injustice will result if Mr. E's child support is set by continuing to apply Civil Rule 90.3(a) calculations in Mr. E's three different orders. A different approach is required to avoid injustice. Mr. E has very little income to live on and to share with his eight children. It is clear that normal application of the child support guidelines will not result in a fair or workable distribution of that limited income. The Division is only able to withhold 40% of Mr. E's pay, so his arrears continue to build up. He now owes more than \$30,000. To avoid injustice, all of Mr. E's children should be treated as if they were in one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all eight children were one family, with one custodial parent and one support order, Mr. E's obligation would be set at 48% of his adjusted income.

Even this approach will leave Mr. E with very little to live on. However, I believe that his is the best approach to use in this case. Of the \$380 that represents Mr. E's monthly adjusted income, \$47.50, or \$390 divided by eight, is the amount that should be awarded for each of Mr. E's children. I have jurisdiction only over this child support order, but it is to be hoped that Mr. E will be able to seek modifications of his other orders to request that the same or a similar approach be used in modifying his ongoing child support orders for those other four children. As discussed at the hearing, Mr. E and Ms. N should inform their Division caseworker if the custody situation has changed from Ms. N having primary custody of all four children.

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.¹³ 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.¹⁴ The adjusted ongoing monthly amount for the four children in this order, \$190, represents a more than threefold increase from the current order of \$50 per month.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition.¹⁵ The petition was served in May of 2011, so this modification should be made effective June 1, 2011.

IV. Conclusion

Mr. E's ongoing child support obligations should be set at \$47.50 per child to avoid injustice.

V. Child Support Order

1. The Division's Notice of Denial of Modification Review issued on June 18, 2011, is overturned.
2. The Petition for Modification of Administrative Child and Medical Support Order issued on May 19, 2011 is granted.

¹³ Alaska Civil Rule 90.3(h)(1).

¹⁴ Alaska Civil Rule 90.3, Commentary X.

¹⁵ Alaska Regulation 15 AAC 125.321.

3. Mr. E's modified ongoing child support obligation for his four children, K, R, A, and J is set at a total of \$190 per month, that is, \$47.50 per child, effective June 1, 2011.
4. All other provisions of the Division's Administrative Child and Medical Support Order, which was issued on December 8, 2010, remain in effect.

DATED this 19th day of August 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 8th day of September, 2011

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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