

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

IN THE MATTER OF:)	
)	OAH No. 11-0311-CSS
K B. O)	CSSD No. 001173766 & 001174565
_____)	

DECISION AND ORDER

I. Introduction

This matter involves K B. O’s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 21, 2011. The obligee child is J, born in 1993. This is a foster care case so the other party is the State of Alaska.

The formal hearing was held on August 25, 2011. Mr. O appeared by telephone, as did L E. O, J’s older sister and one of his custodians. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. O’s child support is set at \$1047 per month, effective January 2011 through September 2011, the month in which J turns 18 years of age. Mr. O’s request for a variance under Civil Rule 90.3(c) is denied.

II. Facts

A. Procedural History

The State of Alaska took custody of J in January 2011; he has been in a juvenile facility and also has spent a portion of time in foster care. CSSD issued an Administrative Child Support and Medical Support Order on May 18, 2011.¹ Mr. O requested an administrative review, after which CSSD issued an Amended Administrative Child and Medical Support Order on July 21, 2011.² Mr. O appealed on August 5, 2011.³

B. Material Facts

Mr. O is the obligee J’s father. In August 2010, J began living with Mr. O, his wife, B, and her three children from a prior relationship. Sometime around Christmas 2010, J was riding

¹ Exh. 3.
² Exh. 5.
³ Exh. 6.

with his older sister L when she was pulled over in a traffic stop for failure to wear a seat belt. L was later charged with a misdemeanor for failing to carry vehicle insurance, but J became extremely upset about the stop. He and Mr. O had a disagreement about the incident that resulted in J moving out of his father's home and into L's apartment. Apparently this was a violation of J's parole, so Mr. O had to report his son to his parole officer. As a result, J was remanded into the State's custody and placed in a juvenile facility. Mr. O attempted to have his son returned to his home, but the State decided to place J in foster care. Against Mr. O's wishes, J was placed with his sister L and then his older brother C. Neither placement was successful and resulted in additional problems, so J was then placed in a different foster home in the beginning of April 2011.

III. Discussion

Mr. O has appealed his child support order on the basis of the time being charged and the monthly amount of the obligation. The person who files the appeal, in this case, Mr. O, has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.⁴

A. Effective Date of the Support Obligation

A parent is obligated both by statute and at common law to support his or her children.⁵ In general, this obligation begins when the child is born.⁶ In administrative child support cases, CSSD's regulations require the agency to collect 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).⁷

CSSD has charged Mr. O with support as of January 2011, when Mr. O reported J for his parole violation and J was remanded into custody.⁸ Mr. O has opposed having to pay child support beginning in January. He asserts he should not be liable for support until April, when his son was placed in a licensed foster home and not with one of his siblings. Mr. O claims that if J's parole officer had handled the case differently and allowed J to return home instead of being placed with L or C, that J would have calmed down and his situation would have stabilized itself.

⁴ 15 AAC 05.030(h).

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁶ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

⁷ 15 AAC 125.105(a)(1)-(2).

⁸ Exh. 3 at pg. 2.

Mr. O is liable for paying support for J as of the time that the State took custody of his son in January. There is no provision in CSSD's statutes or regulations that would allow the agency to second guess the decisions J's parole officer made regarding his placement. Mr. O's obligation to pay support for J must begin in January. J has recently turned 18, however, so Mr. O's duty to support his son should conclude upon J's emancipation and release from State custody.

B. Child Support Calculation

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. CSSD first calculated Mr. O's child support at \$1127 per month,⁹ but after the hearing adjusted the calculation to reflect the obligor's retirement and union dues deductions.¹⁰ The resulting child support amount is now correctly calculated at \$1047 per month.¹¹ It is from this revision of Mr. O's child support that his request to vary the amount based on hardship will be discussed.

C. Hardship Variance

The third issue in this case concerns whether Mr. O's child support obligation should be varied. 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."¹² The existence of "unusual circumstances" may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.¹³ It is appropriate to consider all relevant evidence in order to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).¹⁴

⁹ Exh. 3 at pg. 1.

¹⁰ CSSD's Submission to Record.

¹¹ Exh. 9.

¹² Civil Rule 90.3(c).

¹³ Civil Rule 90.3(c)(1).

¹⁴ Civil Rule 90.3, Commentary VI.B.

Together, Mr. O and his wife earned more than \$200,000 in 2010.¹⁵ They have what appear to be typical household expenses for their income level and family size. Surprisingly, they do not have a car payment.¹⁶ In addition to their monthly expenses, Mr. O and his wife have some unpaid medical bills, the bulk of which appear to be for an elective surgery for him. Finally, they owe the IRS approximately \$13,000 for taxes due on amended returns for 2009 and 2010, in addition to attorney fees in an unrelated legal matter.¹⁷

On the other side of the coin, now that J has turned 18, Mr. O will not be paying the total amount of the monthly obligation, but only a portion of the arrears remaining on his case. For example, with a child support amount of \$1047 per month, Mr. O's arrears would be about \$9,423 for nine months, plus miscellaneous fees and interest. According to CSSD's regulations, repayment on arrears of that amount would be set at about \$255 per month.¹⁸ It does not appear that this figure would be unmanageable for Mr. O.

Based on the evidence in its entirety, Mr. O has not proven by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. Mr. O's request for a hardship variance should be denied.

IV. Conclusion

Mr. O met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). However, Mr. O did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced from the revised amount calculated by CSSD after the hearing. The revised amount of \$1047 per month should be adopted.

V. Child Support Order

- Mr. O is liable for child support for J in the amount of \$1047 per month for the period from January 2011 through September 2011, the month in which J turns 18 years of age;

¹⁵ Exh. 4 at pg. 6.

¹⁶ Obligor's documents received August 29, 2011.

¹⁷ *Id.*

¹⁸ *See* 15 AAC 125.545.

- All other provisions of the Amended Administrative Child Support and Medical Support Order dated July 21, 2011, remain in full force and effect.

DATED this 21st day of September, 2011.

By: Signed
Kay L. Howard
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 12th day of October, 2011.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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