

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

In The Matter of: )

M A. O )

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) OAH No. 11-0342-CSS

) CSSD No. 001146632

**DECISION AND ORDER**

**I. Introduction**

The obligor parent, M A. O, appeals a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued on August 9, 2011. The order denied his request for modification of his support order for X, 5 years of age. The other party is C T. G.

The formal hearing was held on September 22<sup>nd</sup> and October 12<sup>th</sup> of 2011. Mr. O appeared in person. Ms. G participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Decision on Request for Modification Review is affirmed. Mr. O is working less hours because of a back injury he had at work, but there is no evidence in the record to suggest that this lower amount of employment will be anything other than temporary. On that basis, there is insufficient evidence to establish that Mr. O has had a material change in circumstances such that his child support should be modified. The obligor's child support obligation shall remain at \$555 per month.

**II. Facts**

*A. Background*

Mr. O's child support obligation for X was set at \$555 per month in June 2008.<sup>1</sup> On June 23, 2011, Mr. O requested a modification review.<sup>2</sup> On June 27, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On August 9, 2011, CSSD issued a Decision on Request for Modification Review that denied Mr. O's petition for modification for the reason that there was "no significant change in circumstance[s]."<sup>4</sup> Mr. O filed an appeal on

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 5.

August 31, 2011, asserting his wages have dropped dramatically and he cannot pay his expenses.<sup>5</sup>

*B. Material Facts*

Mr. O is employed as a personal care attendant. He reports that he injured his lower back at work in December 2010. He said he receives chiropractic care and physical therapy and is also being treated at a pain clinic. The obligor said he does not have any medical insurance but his medical bills are currently being paid through a worker's compensation claim.

In 2010 Mr. O worked for two employers and earned a total of \$53,965.69, which appears to have been his highest level of earnings since 2008.<sup>6</sup> He now has only one employer and his paystub, dated September 30, 2011, indicates his year-to-date earnings through that date have been \$29,000.80.<sup>7</sup> This puts his estimated annual income for 2011 at \$38,666.67.<sup>8</sup> This is substantially lower than his 2010 income.

Mr. O lives with his girlfriend in a home he is purchasing, although he stated the house is currently for sale. His girlfriend brings home about \$1,600 per month. Mr. O listed monthly expenses of \$1,530 for the mortgage; \$200 for food; \$100 for natural gas; \$17 for trash pickup (\$50 for three months); \$55 for a telephone and Internet service; \$85 for electricity; \$150 for two cell phones; \$75 for cable; \$380 for the payment on a 2011 Honda Pilot he purchased in 2010; \$200-\$250 for gasoline; \$76 for vehicle insurance (\$230 for three months); \$107 for homeowner's insurance; \$50 for entertainment; \$150 for personal care items; \$25 for the monthly payment on a credit card; and \$42 for a first time homeowner's loan (\$500 per year). These appear to be fairly standard expenses for someone living in the Anchorage area.

Mr. O is from Nigeria. He has two children still living there who are older than X. Mr. O has previously been able to send their mother about \$300 per month for their support but he has not been able to do that since he injured his back in December 2010.

Ms. G did not wish to present any testimony.

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<sup>5</sup> Exh. 6.

<sup>6</sup> Exh. 7 at pg. 1.

<sup>7</sup> Exh. A.

<sup>8</sup>  $\$29,000.80 \div 3 \times 4 = \$38,666.67$ .

### III. Discussion

Mr. O appealed CSSD's denial of his request for modification on the basis that his income is no longer high enough to justify the support amount and that having to pay the amount previously ordered is creating a financial hardship for him.

#### A. *Material Change in Circumstances*

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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>9</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. The person requesting the hearing, in this case, Mr. O, has the burden of proving that CSSD's Decision on Request for Modification Review was issued in error.<sup>10</sup>

An obligor parent has the burden of proving his or her earning capacity.<sup>11</sup> An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.<sup>12</sup>

Mr. O has not met his burden of proof as to whether there is good cause and material change in circumstances that justify modifying his child support amount. He asserted that he is currently working a reduced schedule because of a back injury and that he does not know when he will be able to return to his previous schedule. But he did not provide evidence from a medical professional confirming his testimony. Mr. O should have written documentation that he has been injured and is required to work fewer hours every week on more than a temporary basis. Moreover, even if Mr. O had provided a doctor's statement that his work should be reduced, his physical ailment appears to be temporary. There is no question that Mr. O is able to perform at least some of the work at this time because he is working. Thus, it is more likely than not that Mr. O's current work reduction due to his back injury is a temporary circumstance that will be better when his condition improves. The obligor may lack the ability to pay the total child

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<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>12</sup> *Id.* at 1371.

support amount every month while he is working fewer hours, but there is no evidence that Mr. O's condition is permanent or that he has experienced anything other than a temporary change of circumstances. He may incur some additional arrears during this time, but Mr. O should be able to start paying those off once he starts working a full schedule again. Alaska law generally does not favor the reduction of an obligor parent's child support obligation based on temporary circumstances.<sup>13</sup>

*B. Reduction Based on Financial Hardship*

It has been established that Mr. O has not proven a material change in his circumstances. One issue remains to be addressed: whether his child support should be lowered based on financial hardship.

An obligor parent must show "good cause" in order to reduce a child support amount due to financial hardship. 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." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . .

[14]

Based on all the evidence, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. It has not been proven by clear and convincing evidence that manifest injustice would result if Mr. O's child support were not reduced. Granted, he is working fewer hours and earning less, but this appears to be a temporary circumstance. Mr. O's girlfriend helps him with their household expenses, all of which appear to be the usual expenses an Alaskan homeowner would incur.

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<sup>13</sup> *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

<sup>14</sup> Civil Rule 90.3(c)(1).

#### **IV. Conclusion**

Mr. O did not meet his burden of proving that the Decision on Request for Modification Review was issued in error. Mr. O was injured at work at the end of 2010 but the evidence does not establish that this is anything other than a temporary situation. Also, Mr. O did not prove he is entitled to a variation in the support amount based on a financial hardship. The child support order for Mr. O to pay \$555 per month should not be modified. CSSD correctly denied his petition for modification review.

#### **V. Child Support Order**

- CSSD's August 9, 2011, Decision on Request for Modification Review is affirmed;
- Mr. O's child support for X remains at \$555 per month;
- All other provisions of the prior order in Mr. O's case, the Decision and Order *In the Matter of M A. O*, OAH No. 08-0086-CSS (Dept. of Revenue June 11, 2008), remains in full force and effect.

DATED this 14<sup>th</sup> day of November, 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 2<sup>nd</sup> day of December, 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.]