

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

IN THE MATTER OF:)
)
 T L. R) OAH No. 11-0432-CSS
) CSSD No. 001172311
_____)

DECISION AND ORDER

I. Introduction

This matter involves the obligor T L. R's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 19, 2011. The obligee child is C, 17. This is a state custody case, so the other party is the State of Alaska.

The formal hearing was held on November 23, 2011. Ms. R appeared in person; Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. R's arrears are set at \$100 per month, from June 2010 through September 2011, and ongoing. Child support as of October 1, 2011 is suspended and will not be collected unless C re-enters a facility or placement requiring CSSD to collect support on his behalf. In the event Ms. R becomes liable for support after October 2011, it shall be in the amount of \$100 per month, unless modified pursuant to AS 25.27.190. The calculation of Ms. R's child support obligation represents a good cause variation under the provisions of Civil Rule 90.3(c).

II. Facts

A. Procedural History

Ms. R's son, C, was placed into state custody in June 2010.¹ CSSD initiated a child support action against Ms. R. The division subsequently issued an Amended Administrative Child Support and Medical Support Order that set her child support at \$668 per month from June 2010 through September 2011.² Ongoing support was suspended as of October 2011 because C was no longer in a chargeable placement, so Ms. R's arrears totaled \$10,688 through September 2011. Ms. R appealed.

¹ Exh. 2.

² Exh. 6.

B. Material Facts

Ms. R's son, C, was taken into state custody on June 11, 2010.³ For the next few months he was alternately in and out of No Name Youth Center, attending school there while staying with his mother. According to Ms. R, C violated a condition of his probation and was returned to No Name on August 25, 2010. After a hearing, the court issued an order committing him to institutional placement on September 10, 2010.⁴

C was released from No Name about one year later. He entered the No Name Youth Academy (NNYA) on September 20, 2011,⁵ and was released to his mother on September 28, 2011.⁶ CSSD stopped charging for his support as of October 2011. At the time of the hearing he was temporarily back home with Ms. R to address health issues, with the possibility of returning to NNYA as soon as April 2012.

C is not the only minor child living in the obligor's home. Ms. R is the guardian of an 18-year-old family friend named A, born in 1993, who has been living with Ms. R since April 2010.⁷ A's father appointed Ms. R guardian of the child for a one-year period on April 12, 2010, then renewed the appointment for two years on May 12, 2011.⁸ A has lived with Ms. R this entire time and is currently preparing to graduate from high school. Ms. R stated she had guardianship documents signed by the court, but was not able to produce them for the hearing. In addition to A, the obligor's older daughter, R, and her 2-year-old son have lived with Ms. R since May 2011.

In 2010, Ms. R worked for a social services agency, where she earned \$47,723.75.⁹ A support amount calculated from this income figure is \$632 per month for one child.¹⁰ She was employed through mid-September 2011, at which time she was laid off. She had earned \$38,598.43 through the third quarter of 2011.¹¹ Ms. R did not immediately apply for unemployment benefits (UIB), but had done so just prior to the hearing and estimated that her

³ Exh. 8.
⁴ Exh. 2 at pgs. 6 & 7.
⁵ Testimony of T L. R.
⁶ Exh. 8 at pg. 1.
⁷ Exh. 9 at pg. 8.
⁸ Exh. 9 at pgs. 3-8.
⁹ Exh. 5 at pg. 5.
¹⁰ Exh. 12.
¹¹ Exh. 10.

benefits would be approximately \$370 per week. Adding approximately six weeks of UIB to her 2011 income results in total estimated income from earnings and UIB of \$40,818.43.¹² When the PFD of \$1,174 is added, it results in total income from all sources of \$41,992.43.¹³ A child support amount calculated from this income figure is \$586 per month for one child.¹⁴

III. Discussion

A. *Ms. R is Liable for C's Support During His Placement*

Ms. R argues that she should not be liable for C's support during his initial placement at No Name. She stated after he was first placed there he was released to her to stay at home and just attend the school program during the day at No Name. She further asserts C's probation officer assured her she would not have a financial obligation as a result of C's placement.

A parent is obligated both by statute and at common law to support his or her children.¹⁵ The applicable statute requires that when a delinquent minor is committed into state custody, his or her parent is obligated to pay support pursuant to Civil Rule 90.3.¹⁶ By regulation, CSSD collects support from the first month in which state placement began.¹⁷ According to Ms. R, C was first placed in No Name on June 11, 2010. The documentary record indicates that a summons was issued to Ms. R for a disposition hearing for C on June 14, 2010.¹⁸ Subsequently, he was adjudicated a delinquent minor by the court on July 24, 2010, with an effective date of June 14, 2010.¹⁹ Ms. R is therefore liable for C's support as of June 2010. It does not change the analysis that his probation officer told Ms. R she would not be liable, or that during the summer C was released to her care for overnight stays. Her obligation arises by operation of law based on the fact of C's commitment, irrespective of the mistaken information.

B. *Child Support Calculations*

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

¹² 6 x \$370 = \$2,220 + \$38,598.43 = \$40,818.43.

¹³ Attachment A.

¹⁴ *Id.*

¹⁵ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁶ AS 47.12.230(a).

¹⁷ 15 AAC 125.105(a)(1).

¹⁸ Exh. 2 at pg. 1.

¹⁹ Exh. 2 at pg. 3.

Social Security. CSSD calculated Ms. R's child support at \$632 per month for 2010 and \$684 per month for 2011.²⁰ The 2010 amount is correct because it is based on Ms. R's actual 2010 income. The 2011 calculation is incorrect because it is based on income imputed to the obligor as though she worked the entire year. However, at the time of the hearing she had been unemployed since September 14, 2011 and had applied for UIB only recently, thus leading to an income figure significantly below CSSD's determination.²¹ On the basis of her testimony, Ms. R's actual 2011 income from all sources is estimated at \$41,992.43. The correct child support calculation resulting from this figure is \$586 per month for one child.²²

C. Older Children in the Home

Ms. R is requesting consideration of the fact that at the time her obligation to support C arose, she had a child older than him living in the home, a young woman named A, who was born in 1993 and who is not quite one year older than C. Ms. R was appointed A's guardian by the girl's father in April 2010, prior to C's commitment in June 2010. Ms. R also testified that her daughter, R, 23, and grandson, F, had come to live with her in May 2011.

1. A

Civil Rule 90.3(a)(1)(C) provides that a parent is entitled to a deduction from income for the cost of providing support "for children from prior relationships living with the parent."²³ To qualify, the child must be the parent's biological child from a prior relationship or the parent's adoptive child. Ms. R is A's guardian, not her parent, so the obligor is not entitled to this specific deduction from income for supporting A in her home.

2. R

In general, a parent's obligation to support a biological child ends when the child is emancipated at the age of 18.²⁴ R is Ms. R's biological child, but she had reached the age of 23 by the time she and her 5 month-old son, F, returned to the obligor's home. As a result, Ms. R's *legal* obligation to support R had ended several years prior, so she would not be considered a

²⁰ Exh. 12.

²¹ Testimony of T L. R. Consideration of this amount is moot because CSSD abandoned it in recommending that the \$632 figure be applied to both years of Ms. R's obligation. This is most likely due to the fact that \$684 per month does not represent a 15% change from \$632 per month, as required by the modification provisions of Civil Rule 90.3(h). *See* CSSD's Submission to Record dated December 22, 2011.

²² Attachment A.

²³ Civil Rule 90.3(a)(1)(D).

²⁴ AS 25.20.010.

child for whom Ms. R had a support obligation any longer. Thus, the deduction for supporting a prior child in the home also would not apply to R.

D. Reduction in the Support Amount for “Good Cause”

The final issue in this case concerns whether Ms. R’s child support obligation should be adjusted. 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.”²⁵

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child. See also Commentary VI.B.2.^[26]

In applying the above language to Ms. R’s arrears of nearly \$10,000,²⁷ the primary factor that must be taken into consideration is that C was released to her custody on September 28, 2011. With C in her home, any child support the obligor actually has to pay on this case would deprive C of the support he should have as a member of Ms. R’s household. This essentially makes C bear the current burden of those arrears, along with the others in Ms. R’s home, particularly A, who remains a minor and has not yet graduated from high school. Thus, it would be even harder for Ms. R to provide such basics as food, housing and utilities.

²⁵ Civil Rule 90.3(c).

²⁶ Civil Rule 90.3, Commentary VI.E.1.

²⁷ As totaled from the correct monthly obligation, as discussed in Section III.B., above, but without interest and fees. *See* n.20, 22.

The Alaska Supreme Court holds that factors such as these, which relate to the well being of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term “good cause,” however, is to “be determined by the context in which it is used.”²⁸ That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, commentary at sec. I(B).^[29]

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. R proved by clear and convincing evidence that manifest injustice would result if she were required to pay the full arrears in this case. It makes little sense, and it would be unjust, to burden her household by adding more child support debt to her obligation to support C while he is in the home. Setting Ms. R’s child support at \$100 per month constitutes a reasonable measure of her ability to pay support under Civil Rule 90.3(c). Her arrears would total about \$1,600, exclusive of interest and fees, and would be collected in the amount of approximately \$90-\$100 per month.³⁰

IV. Conclusion

Ms. R met her burden of proving by clear and convincing evidence that manifest injustice would result if her child support obligation were not varied from the amounts calculated by CSSD under Civil Rule 90.3. Her child support amount should be varied under Civil Rule 90.3(c) to \$100 per month for the period from June 2010 through September 2011. Ongoing child support is suspended so long as C does not return to a living situation that requires his parent to pay support through CSSD. In the event Ms. R becomes liable for support after October 2011, it shall be in the amount of \$100 per month, unless modified pursuant to AS 25.27.190.

V. Child Support Order

- Ms. R is liable for child support for C in the amount of \$100 per month for the period from June 2010 through September 2011, and ongoing;
- Ongoing support is suspended as of October 2011, and shall not be collected, so long as

²⁸ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

²⁹ *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

³⁰ See 15 AAC 125.545(a).

C does not return to a living situation that requires his parent to pay support through CSSD;

- All other provisions of the Amended Administrative Child Support and Medical Support Order dated October 19, 2011, remain in full force and effect.

DATED this 1st day of May, 2012.

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 18th day of May, 2012.

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

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