

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

IN THE MATTER OF:)

A W)

OAH No. 11-0466-CSS

CSSD No. 001148922

DECISION AND ORDER

I. Introduction

This case involves the obligor A W' appeal of a Decision on Request for Modification Review that denied his request for modification of his child support obligation. The Child Support Services Division (CSSD) issued the decision on December 2, 2011. The obligee child is J, 7 years of age. The custodial parent is K J. P.

The formal hearing was held on January 3, 2012. Mr. W appeared in person; the custodian appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, Mr. W is entitled to a deduction from income for paying support for his prior child L pursuant to a New York support order. He is also entitled to a deduction for supporting two prior children, D and Z, in his home. Incorporating these deductions into a child support calculation based on Mr. W' estimated annual income for 2011 results in a child support amount of \$576 per month for one child, J.

II. Facts

A. Procedural History

Mr. W' child support obligation for J was set at \$681 per month in a child support decision issued by the Office of Administrative Hearings and adopted as final on September 17, 2010.¹ In September 2011, Mr. W requested a modification review and CSSD notified Ms. P.² Mr. W provided financial information.³ On December 2, 2011, CSSD issued a Decision on Request for Modification Review that denied his request for a modification because a child support calculation using his current income had not resulted in a material change in

¹ Exh. 1.

² Exhs. 2-3.

³ Exh. 4.

circumstances.⁴ He appealed on December 7, 2011, asserting that two of his prior children are now living with him and that he also pays support for another older child, L.⁵

B. Material Facts

Mr. W and Ms. P have one child, J, who is 7 years old. She lives out of state with Ms. P. Mr. W has four other children, all of whom are older than J: K, 18; D, 16; L, 12; and Z, 8.⁶

K lives in Mr. W' home country of Grenada and has reached the age of emancipation. In his 2010 child support appeal, Mr. W requested a deduction from income for paying support for K, but he did not provide sufficient proof of making those payments and his request was denied.⁷ He did not raise the issue in this appeal.

Mr. W' middle son, L, lives out of state with his mother. Mr. W is court-ordered to pay support for L in the amount of \$362.02 per month, and he has been in compliance with that order.⁸

Mr. W' two other children, D and Z, previously lived in Grenada. However, in September 2011, Mr. W brought both children to the United States to live with him. He submitted copies of immigration documents showing the children's entry into this country.⁹ Mr. W also provided copies of school records showing both of them are enrolled in and attending school in Anchorage.¹⁰

For the past several years, Mr. W has been employed by both A and H C R.¹¹ Statistics maintained by the Alaska Department of Labor and Workforce Development (DOL) show that in 2009, he earned \$56,737.27; in 2010, \$60,117.96.¹² His total earnings for 2011 are not available because the fourth quarter of the year had not yet been reported, but he worked for both employers for all of 2011. For the first three quarters of 2011, the DOL records show that he

⁴ Exh. 5.

⁵ Exh. 6.

⁶ All of these children have different mothers. *In the Matter of A W*, OAH No. 10-0146-CSS at 2 (Commissioner of Revenue 2010).

⁷ *Id.* at 5-7.

⁸ *Id.* at 2.

⁹ Exh. 11.

¹⁰ Exh. 6; Exh. 11 at pgs. 9-10.

¹¹ Exh. 7.

¹² *Id.*

earned a total of \$47,513.37 from A and H C R.¹³ Using that figure, CSSD estimated his total annual earnings for 2011 at \$63,351.16.¹⁴ This is the best estimate of Mr. W' 2011 income from employment. Adding the 2011 PFD of \$1,174 to this amount results in total annual income of \$64,525.16.

After the hearing Mr. W submitted documents showing that he had been terminated from employment at A on January 10, 2012, apparently because he had received several "traffic infractions" and acquired too many points against his driver's license to meet the minimum qualifications for his position.¹⁵ He did not submit any other information, including what efforts he may have made to supplement his income.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁶ 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. Mr. W' child support has been \$681 per month, as set in September 2010. Thus, a child support calculation of \$783.13¹⁷ or more, or of \$578.85¹⁸ or lower, would be sufficient to warrant modification in this case.

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹⁹ In this case, the notice was issued on September 26, 2011, so a modification would be effective as of October 1, 2011.²⁰

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.²¹ Mr. W filed the appeal, so he must prove by a preponderance of the evidence that the Decision on Request for Modification Review is incorrect.²²

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Id.

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$\$47,513.37 \div 3 = \$15,837.79 \times 4 \text{ qtrs.} = \$63,351.16.$ Exh. 8 at pg. 1.

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Exh. 12 at pg. 3.

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AS 25.27.190(e).

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$\$681 \times 1.15 = \$783.13.$

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$\$681 \times .85 = \$578.85.$

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15 AAC 125.321(d).

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Exh. 3.

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15 AAC 05.030(h).

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2 AAC 64.290(e).

A. Total Income from All Sources

Mr. W did not raise the issue of his income on appeal, but he submitted documents showing that he had been terminated from one of his jobs after the hearing.

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", minus mandatory deductions such as taxes and Social Security. CSSD has submitted two estimates of Mr. W' total annual income; the first, \$63,351.16, filed before the hearing, was based on the assumption that he would continue to work for two employers, as he has done for at least the last three years. The second estimate, \$36,442.53, was filed after Mr. W reported that he had been terminated by A, and it is based on the amount he earned from employers other than A during the four consecutive quarters from the fourth quarter of 2010 through the third quarter of 2011.²³

Mr. W' total annual income for the year 2011 should be used for the child support calculation in this case. CSSD correctly estimated this figure at \$63,351.16 before the hearing and it is the annual income that Mr. W was earning in October 2011 when this modification took effect.

Mr. W apparently has been terminated from his work at A, but remains at H C R. There is no other evidence in the record about his employment status – Mr. W could be working more hours at H in order to make up for the loss of his job at A. Without more information, it is more likely than not that Mr. W' partial unemployment is a temporary circumstance. He may lack the ability to pay the total child support amount every month and thus incur some additional arrears, but there is no evidence that Mr. W is permanently unemployed. Alaska law generally considers unemployment to be a temporary circumstance that should not result in the reduction of an obligor parent's child support obligation.²⁴ Prior decisions from the Office of Administrative Hearings follow this approach.²⁵

B. Deduction for Supporting a Prior Child

Civil Rule 90.3(a)(1)(C) provides that a parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" A companion provision of the rule, Civil

²³ Submission to Record at pg. 1; *See also* Exh. 14 at pg. 1; Exh. 7.

²⁴ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

²⁵ *See In The Matter Of M.J.V.*, OAH Case No. 09-0181-CSS.

Rule 90.3(a)(1)(D), 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.”²⁶ Both deductions are applicable in this case.

The primary issue Mr. W raised in this appeal is whether he is entitled to a deduction for supporting D and Z in the home now that they are living here in Alaska with him. CSSD does not challenge the deduction, but Ms. P is opposed to it. She questions whether he has legal custody of D and Z and points out that there is another adult living in his home with whom he shares expenses.²⁷ Ms. P also believes that Mr. W brought the children to Alaska in order to reduce his child support obligation.

Mr. W is entitled to the deduction for supporting D and Z in the home. The children accompanied him to the United States with the consent of the Department of Homeland Security, U. S. Citizenship and Immigration Services.²⁸ They are attending school in Anchorage with Mr. W listed as their parent.²⁹ Ms. P has not submitted actual evidence that makes it more likely than not that these facts are untrue. Also, it is not relevant in this appeal that Mr. W shares expenses with another adult – he did not file the appeal on the basis of an inability to meet his support obligation, and those issues were not taken into consideration. Ultimately, sharing expenses with another individual simply makes it easier for Mr. W to meet his support obligation for J.

Prior to the hearing, CSSD estimated Mr. W’ annual income for 2011 at \$63,351.16.³⁰ This is the best estimate of his 2011 income from employment. Adding the 2011 PFD of \$1,174 to this amount results in total annual income of \$64,525.16.

In addition to the usual deductions for federal income tax, Social Security, Medicare, and unemployment insurance, Mr. W is entitled to a monthly deduction of \$362 for his payment of support for L. Also, he is entitled to a deduction for supporting D and Z in the home. CSSD has performed the steps necessary to calculate a support obligation for J by doing separate calculations and including the deduction for each child.³¹ When all of these steps are completed,

26 Civil Rule 90.3(a)(1)(D).

27 Exh. 13 at pg. 1.

28 Exh. 11 at pgs. 3-5.

29 Exh. 6; Exh. 11 at pgs. 9-10.

30 $\$47,513.37 \div 3 = \$15,837.79 \times 4 \text{ qtrs.} = \$63,351.16$. Exh. 8 at pg. 1.

31 Exh. 8.

and the final calculation is performed, it results in a child support amount of \$576 per month for one child.³² This is only \$2 more than the 15% reduction from \$681 per month that is required to justify modification, but it is technically sufficient.

IV. Conclusion

Mr. W met his burden of proving by a preponderance of the evidence that the Decision on Request for Modification Review was incorrect. Mr. W is entitled to an additional deduction from income in the amount of \$362 per month for paying support for his prior child L. He is also entitled to a deduction for paying support for his prior children D and Z who are now living with him in Alaska. CSSD has calculated his support obligation for J at \$576 per month – this figure is correct and should be adopted, effective October 1, 2011.

V. Child Support Order

- Mr. W is liable for modified child support for J in the amount of \$576 per month, effective October 1, 2011;
- All other provisions of the prior order in effect in this case, the March 16, 2010, Modified Administrative Child Support and Medical Support Order, remain in full force and effect.

DATED this 8th day of February, 2012.

By: Signed
Kay L. Howard
Administrative Law Judge

³² Exh. 8 (8d) at pg. 5.

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 6th day of March, 2012.

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

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