

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

In the Matter of:)	
)	OAH No. 12-0116-CSS
J S. T)	CSSD No. 001175882
_____)	

DECISION AND ORDER

I. Introduction

This matter is a Uniform Interstate Family Support Act case based on a petition from the State of Kansas. The custodian of record is C S, and the obligee child is K S, who is approximately 11 years old.

A hearing was held on May 24, 2012. Mr. T appeared in person, and Ms. S appeared by telephone. The Child Support Services Division (CSSD) was represented in person by Child Support Specialist Andrew Rawls.

Based on the evidence in the record, Mr. T's child support obligation should be set at \$1,082 per month during 2011, \$1,115 per month from January 1, 2012 through July 31, 2012, and \$904 per month beginning on August 1, 2012.

II. Facts

A. Background

A petition pursuant to the Uniform Interstate Family Support Act was received by CSSD on May 15, 2011.¹ An Administrative Child Support and Medical Support Order was issued on February 15, 2012, setting Mr. T's child support obligation at \$1,149 per month for one child.² Mr. T requested an administrative review.³ Based on the information provided with that request, CSSD issued an Amended Administrative Child and Medical Support Order setting Mr. T's support obligation at \$1,098 per month for one child.

Mr. T appealed the amended order, and requested a formal hearing.⁴ CSSD submitted new calculations for Mr. T's support obligation for various periods of time in the past and into

¹ Exhibit 1.
² Exhibit 3.
³ Exhibit 4.
⁴ Exhibit 7.

the future.⁵ Mr. T submitted an additional written statement received by the Office of Administrative Hearings on May 18, 2012. Six exhibits are attached to that statement. Those exhibits are identified here as exhibits T1 – T6 to distinguish them from CSSD’s exhibits.

B. Material Facts

Mr. T is serving in the military and currently living in Alaska.⁶ Mr. T will be moving from Alaska on August 1, 2012 for an assignment in California. His wife is also in the military, and she will remain in Alaska until May of 2013. They both hope to be stationed together after that date, but being together is not guaranteed.

Mr. T’s wife has a Pay Grade of O-3 with over 3 years of service, so she is paid \$4,614.40 per month.⁷ Mr. T testified that his wife also receives a housing allowance. As an O-3, she would receive an allowance of \$1,857 per month.⁸ The couple owns a home in Anchorage which they hope to sell. Their mortgage is \$1,550 per month, and they also pay an additional \$280 per month to the homeowners association.

Mr. T has one other child who is approximately 6 months younger than K. An Arizona court order from 2002 established his child support obligation at \$552 per month.⁹ He has been paying that obligation since at least January of 2010.¹⁰

III. Discussion

A. Applicable Law

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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.” CSSD has the authority to issue a support order at the request of another state agency.¹² CSSD must follow Alaska law, rather than the law of the requesting state, when issuing an order establishing child support under the Uniform Interstate

⁵ Exhibit 8.

⁶ The factual statements concerning Mr. T’s personal and financial situation are based on his testimony unless otherwise noted.

⁷ Mr. T testified as to her Pay Grade. The parties agreed at the hearing that the undersigned ALJ could research the precise pay rate online. Pay rate tables can be found at <http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html> (accessed June 6, 2012).

⁸ See <http://images.military.com/media/benefits/pdf/bah-2012-without.pdf> (accessed June 6, 2012). Again, the parties agreed at the hearing that the undersigned could rely on the amounts shown online.

⁹ Exhibit T1.

¹⁰ *Id.*

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² AS 25.25.305(b)(1).

Family Support Act.¹³ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

B. Deduction for Child of Prior Relationship

Mr. T's main contention on appeal is that he should receive credit for child support payments he has been making for his other child. Civil Rule 90.3 allows a deduction from gross income for "child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings and actually paid[.]"¹⁵

Mr. T notes that there is no definition of "prior relationships." He argued that prior relationship refers to the prior case or ruling that established a support obligation. He also testified that during the time period when these two children were conceived, he had a number of different relationships with different women. Some may have started, ended, and then restarted again. Mr. T testified that when a particular relationship starts and ends is often difficult or impossible to accurately determine. CSSD argued that "prior relationship" is determined solely from the birth of the children, and that in this case, Mr. T is not entitled to a deduction because L is the older child and therefore Mr. T's other child is from a subsequent relationship.

Relationships can be simultaneous. They can also end and then start anew. Marriages can continue to exist during the time when one parent has a separate relationship with someone else that results in the birth of a child that is younger than one child of the marriage and older than another child of that marriage. What is generally true, however, is that some form of relationship exists at the time a child is conceived, and that the child is born approximately nine months later. The "relationship" referred to in Civil Rule 90.3 is the physical relationship that resulted in the child's conception, regardless of whether there was a marriage, partnership, or any other type of relationship between the parents at the time.

Using this definition of "prior relationship" supports Civil Rule 90.3's goal of encouraging people not to make lifestyle choices to the detriment of the obligation to support their children. The support obligation for an older child should not be reduced simply because a parent decided to have subsequent children.¹⁶ While in this case Mr. T was not aware of his

¹³ AS 25.25.604; *State v. Bromley*, 987 P.2d 183, 189 (Alaska 1999).

¹⁴ 15 AAC 05.030(h).

¹⁵ Civil Rule 90.3(a)(1)(C).

¹⁶ See *In re V.S.*, OAH No. 11-0271-CSS (Dept. of Revenue 2011) page 4; Civil Rule 90.3 Commentary VI.B.2.

older child at the time of the subsequent relationship, in many cases a parent is fully aware of his or her legal obligation to support an existing child at the time he or she chooses to have a subsequent child. Using the birth date of each child as a bright line rule will help parents understand which child comes first in terms of their financial responsibilities when making subsequent choices about having additional children. It will also make it possible for CSSD to efficiently and consistently enforce the applicable child support statutes and regulations. Absent a bright line rule of this sort, CSSD would need to enquire into the details of the parents' relationships to determine which relationship began first, regardless of the birth order of the children.¹⁷

In the absence of persuasive evidence to the contrary, birth order of the children is a reasonable proxy for which child is the child of a prior relationship.¹⁸ Because K was born first, Mr. T's other child is not a child of a prior relationship. He is not entitled to a deduction from income for those child support payments in calculating his support obligation for K.

C. Which State Law Should Apply?

Mr. T also argues that his support obligation should be calculated pursuant to Kansas law, or a combination of Kansas law and Alaska law. He testified that he is a resident of Arizona. Mr. T is living in Alaska now only because of his military assignment, and will be leaving soon. It appears that Ms. S and K have never lived in Alaska, and are currently living in Kansas. While there are reasonable arguments in support of using Kansas law instead of Alaska law, the legislature has resolved this policy issue by determining that Alaska law applies.¹⁹ CSSD and the Department of Revenue must follow the legislature's determination.

¹⁷ Mr. T's suggestion that "prior relationship" be based on which child support order is entered first would make support orders arbitrarily dependent on which custodial parent got to the court house first, and the speed at which courts or administrative agencies processed support order applications. It also requires a strained reading of Civil Rule 90.3. If this rule had intended that priority be given to prior support orders instead of relationships, it would have used the term "support order" or a similar term rather than "relationship."

¹⁸ A premature birth is one example of when date of birth might not accurately establish which child is the child of a prior relationship. In this case, K was born five weeks premature. Exhibit 1, page 6. Given the six months difference in the age of the two children, this is not sufficient to suggest that K was conceived second. Another exception applies when a child is adopted. *See In re J.W.L III.*, OAH No. 11-0382-CSS (Dept. of Revenue 2012), page 6. In that situation, the adopting parents have made an intentional decision to bring another child into the family with knowledge that they may have an existing financial obligation for other children. Regardless of the relative ages of the children, the children the adoptive parents are already supporting should not have that support reduced because of the parents' lifestyle choice to adopt a child.

¹⁹ AS 25.25.604.

When shared custody is not an issue, and except when hardship is being considered, Alaska law looks only at the income of the obligor parent. It is assumed that the custodial parent is also contributing at least the same percentage of his or her income to the support of the parents' child.²⁰ Thus, while not explicitly calculated, the custodial parent's income is a factor in determining the total amount of financial support received by the child.

D. Calculation of Support Obligation

Mr. T also had concerns about the calculations made by CSSD in determining his child support obligation.²¹ The division conceded that some of his concerns were legitimate, and recalculated his child support obligation. CSSD determined that Mr. T's support obligation during 2011 was \$1,082 per month.²² It calculated his obligation for January 2012 through August of 2012 at \$1,115 per month.²³ Finally, it determined that his ongoing support obligation would be \$904 per month beginning in August of 2012 when he moves to California.²⁴

At the hearing, Mr. T agreed with the income amounts used by CSSD in these calculations. He also agreed that the amount used for his voluntary retirement deduction was correct. Mr. T continued to dispute the amount used for his federal tax deductions.

Mr. T submitted his Leave and Earning Statements and a spreadsheet comparing the tax withholding amounts shown on those statements to the withholding amounts used by CSSD.²⁵ The amount deducted from his pay is greater than the amount used in CSSD's calculations. CSSD asserted that the amount used in its calculations comes from the federal withholding tables and is based on the income of a single person with no dependents. Because Mr. T is married and his wife also works, they could be in a higher tax bracket and his share of the total tax liability might be slightly higher because some of his income might be taxed at a higher rate.²⁶ In general, a higher tax rate results in lower net earnings and a lower support obligation.

²⁰ Civil Rule 90.3, Commentary II.

²¹ In addition to the issues discussed above, Mr. T sought a deduction for voluntary retirement contributions, disputed the amount of the deductions for taxes, and noted that his pay changed in 2012, and would change again when he moved to California in August.

²² Exhibit 8, page 2 – 3.

²³ Exhibit 8, pages 4 – 5.

²⁴ Exhibit 8, pages 6 – 7.

²⁵ Exhibit T2.

²⁶ The difference in his child support obligation would not be large, but it would not be insignificant. Exhibit T2 shows a difference ranging from \$47.44 per month up to \$80.72 per month. This would result in a child support obligation difference of between \$9.50 and \$16.14 per month.

The deduction allowed under Civil Rule 90.3 is for federal tax, social security tax, and Medicare tax.²⁷ The amount deducted from Mr. T's pay may or may not match what his actual tax liability will be at the end of each year, depending on other adjustments to his federal tax calculation and depending on how he completed his W-2 withholding form. Obligor is free to present prior year tax returns or other evidence to show that their actual tax liability is or will be different. But in the absence of that evidence, CSSD's use of the tax tables for a single person with no dependents is a better estimate of an obligor's tax liability than the amount withheld from a paycheck based on a W-2 withholding form.²⁸ Thus, the support amounts listed above and shown in Exhibit 8 are the amounts that should be awarded.

E. Hardship Analysis

A child support award may be varied from the amount calculated under Civil Rule 90.3(a) for "good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."²⁹ Mr. T argued that he is entitled to a hardship variance for two reasons. First, the combined impact of this child support award with his current Arizona obligation would be a substantial percentage of his income. Second, between August of this year and May of 2013, he and his wife will have to maintain two households.

After moving to California in August, Mr. T will have an adjusted annual income of approximately \$54,000 per year, or \$4,500 per month.³⁰ His child support obligation for his two children will total \$1,456 per month.³¹ Mr. T testified that his mortgage and homeowners' association dues totals \$1,830 per month. This leaves him with \$1,214 per month for his other living expenses. While this is not a lot of money, Mr. T's wife is also in the military, receiving her military pay and a housing allowance. They are not supporting any other children except for the two discussed in this decision.³² While the family might have to make some difficult choices regarding their expenses, between the two of them they should be able to pay child support and

²⁷ Civil Rule 90.3(A)(1)(A)(i) – (iii).

²⁸ Individuals can ask to have additional money withheld so that they have lower net pay during the year, but receive a tax refund after filing their tax returns.

²⁹ Civil Rule 90.3(c)(1).

³⁰ Exhibit 8, page 6.

³¹ Before moving to California, his support obligation will be \$211 higher per month, but his adjusted income will also be higher.

³² Testimony of Mr. T.

support two households. The evidence in the record does not establish by clear and convincing evidence³³ that manifest injustice would result if the child support award is not varied.

IV. Conclusion

Mr. T has shown that the child support obligation originally calculated by CSSD was incorrect. CSSD recalculated his child support obligation, and the amounts shown in Exhibit 8 are proper. This amount is based on the Civil Rule 90.3(a) guidelines without any variance.

V. Child Support Order

- Mr. T's child support obligation is set at \$1,082 per month for one child effective May 1, 2011 through December 31, 2011;
- Mr. T's child support obligation is set at \$1,115 per month for one child effective January 1, 2012 through July 31, 2012;
- Mr. T's child support obligation is set at \$904 per month effective August 1, 2012;
- All other provisions of the April 23, 2012 Amended Administrative Child and Medical Support order remain in effect.

DATED this 6th day of June, 2012.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

³³ Clear and convincing is a higher burden of proof than proof by a preponderance of the evidence that is used for most other factual issues.

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 2nd day of July, 2012.

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

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