

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

IN THE MATTER OF:)	
)	OAH No. 12-0118-CSS
A P. R IV)	CSSD No. 001129713
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A P. R IV, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 24, 2012. The obligee child is A, 8. The other parent is N R. F.

The hearing was held on May 29, 2012. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed. Mr. R's child support is modified to \$792 per month, effective April 1, 2012. Mr. R's request for a variance under Civil Rule 90.3(c) is denied.

II. Facts

A. Procedural History

Mr. R's child support obligation for A was set at \$50 per month in April 2007.¹ Mr. R initiated modification of the order on March 19, 2012.² On March 28, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. R provided income information.⁴ On April 24, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set his modified ongoing child support at \$792 per month, effective April 1, 2012.⁵ Mr. R filed an appeal and requested equal consideration of his other child support case.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Mr. R and Ms. F are the parents of A, 8 years of age. A lives with Ms. F. Mr. R has a younger son, B, 2, for whom he also pays support through CSSD to the child's mother. Mr. R's ongoing child support for B has recently been established at \$634 per month, and that amount is at issue in a separate appeal.

Mr. R has worked for the same employer in the sheet metal industry since early 2010. He earns \$25 per hour for full-time work.⁷ He typically receives a bonus at the end of the calendar year, but he testified it is not guaranteed. In 2010, he earned \$48,453.51, and in 2011, he earned \$59,882.50.⁸ A child support amount calculated from Mr. R's 2011 income equals \$792 per month for one child.⁹ CSSD calculated this figure for Mr. R's modification.¹⁰

Mr. R submitted a list of expenses after the hearing. His usual monthly expenses are \$1,000 for rent; \$500 for food; \$290 for utilities; \$60 for cable; \$70 for a cell phone; \$60 for Internet service; \$500 for gasoline; \$22.50 for vehicle maintenance; \$100 for vehicle insurance; \$88 for health insurance; up to \$200 for entertainment expenses; \$50 for personal care expenses; and \$160 for cigarettes.¹¹ Mr. R indicated he is currently purchasing his own home and devotes any extra cash to fixing it up.

III. Discussion

A. Multiple Children

Mr. R does not challenge CSSD's modification of his child support to \$792 per month. In fact, he said he reached that same number using the division's online child support calculator. Rather, he filed the appeal because he believes his child support should be calculated for both of his children at 27% of his adjusted annual (net) income, pursuant to the requirements of Civil Rule 90.3. By logical extension, apparently Mr. R would divide the 27% amount equally between his two children. He does not agree that his child support should be 20% of his net income for each child just because they are in two separate cases.

⁷ Exh. 4 at pgs. 3-4.

⁸ Exh. 7; Exh. 4 at pg. 1.

⁹ Exh. 5 at pg. 7.

¹⁰ Exh. 5 at pg. 7.

¹¹ Obligor's document received on May 31, 2012.

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹² If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred and the order may be modified. Mr. R’s child support was set at \$50 per month in 2007. Thus, a child support calculation of \$57.50 or more would be sufficient to warrant modification in this case.¹³

Mr. R’s argument that his child support should be calculated at 27% of his adjusted annual income, then by extension, divided equally between his two children, is fundamentally incorrect. Civil Rule 90.3 does not contain any provision for combining an obligor’s different child support cases. The Rule, and in fact, all child support law, calculates support obligations based on the children of each discrete set of parents. It does not provide that all of a parent’s children be lumped together for child support purposes.

Civil Rule 90.3 does understand that an obligor father may be paying support for multiple children from different mothers. The Rule provides for specific adjustments if an obligor parent is paying support for children who are older than the child in a particular order. For each successive child, the law provides a specific mathematical deduction to reflect the support paid for the older children.¹⁴ Thus, Mr. R’s support obligation for the younger child in his other case has an adjustment for the child of this order, but not vice versa. Civil Rule 90.3 states that in general, an obligor parent’s child support obligation should not be reduced for that parent’s *younger* children.¹⁵ This is because the parent has a choice not to have subsequent children if he or she cannot support the children from his or her first family.

CSSD correctly calculated Mr. R’s child support at \$792 per month for A. The obligor’s younger child cannot be included in this case, but the calculation for the younger child will be reduced somewhat to reflect the support he pays in this order for A.

C. Financial Hardship

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

¹² AS 25.27.190(e).

¹³ \$50 x 1.15 = \$57.50.

¹⁴ See Civil Rule 90.3(a)(1)(C).

¹⁵ Civil Rule 90.3, Commentary VI.B.2.

establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”¹⁶ The presence of “unusual circumstances” in a particular case also may be sufficient to establish “good cause” for a variation in the support award.¹⁷

Based on the evidence in its entirety, Mr. R’s situation does not present “unusual circumstances” of the type contemplated by Civil Rule 90.3. He has not proven by clear and convincing evidence that manifest injustice would result in the absence of a variance in the child support amount. His regular monthly expenses do not appear to be significantly higher than normal or unique or numerous. He may have to make some different budgeting decisions, but that is often the case for a person with children to support. A is entitled to child support from Mr. R based on the obligor’s income. That obligation has been calculated at \$792 per month and it should be affirmed.

IV. Conclusion

Mr. R did not meet his burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). CSSD’s calculation of \$792 per month for one child is correct. Mr. R has not shown unusual circumstances or good cause for a variance in the support amount calculated.

V. Child Support Order

- Mr. R is liable for modified ongoing child support in the amount of \$792 per month, effective April 1, 2012;
- All other provisions of CSSD’s Modified Administrative Child Support and Medical Support Order dated April 24, 2012, remain in full force and effect.

DATED this 28th day of June, 2012.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁶ Civil Rule 90.3(c).
¹⁷ Civil Rule 90.3(c)(1).

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 16th day of July, 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.]