

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

|                   |   |                     |
|-------------------|---|---------------------|
| IN THE MATTER OF: | ) |                     |
|                   | ) | OAH No. 12-0119-CSS |
| A P. P IV         | ) | CSSD No. 001179341  |
| _____             | ) |                     |

**DECISION AND ORDER**

**I. Introduction**

The obligor, A P. P IV, appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 24, 2012. The obligee child is B, 2. The other parent is E M. D.

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 Amended Administrative Child and Medical Support Order is affirmed. Mr. P's child support is set at \$782 per month from September 2011 through December 2011; and \$634 per month from January 2012 through June 2012, and ongoing. Mr. P's request for a variance under Civil Rule 90.3(c) is denied.

**II. Facts**

*A. Procedural History*

Ms. D began receiving public assistance benefits for B in September 2011.<sup>1</sup> CSSD initiated a child support action on behalf of the child, which resulted in the division issuing an Amended Administrative Child and Medical Support Order on April 24, 2012.<sup>2</sup> That order set Mr. P's ongoing child support at \$634 per month, with arrears totaling \$4,714 from September 2011 through April 2012.<sup>3</sup> Mr. P appealed, asserting that he gets a Christmas bonus, but it is not guaranteed, and that he has to pay support for two children but the amount is too high for his income.<sup>4</sup>

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<sup>1</sup> Exh. 3 at pg. 10.  
<sup>2</sup> Exh. 3.  
<sup>3</sup> *Id.*  
<sup>4</sup> Exh. 4.

*B. Material Facts*

Mr. P and Ms. D are the parents of B, 2 years of age. B lives with Ms. D. Mr. P has an older child, A, 8, for whom he also pays support through CSSD to the child's mother. Mr. P's ongoing child support for A is also on appeal and the modified amount has been set at \$792 per month.

Mr. P has worked for the same employer in the sheet metal industry since early 2010. He earns \$25 per hour for full-time work.<sup>5</sup> 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.<sup>6</sup> A child support amount calculated from Mr. P's 2011 income equals \$782 per month for one child.<sup>7</sup> This includes a deduction for the amount of support he paid at the time for A of \$50 per month. CSSD calculated Mr. P's 2012 child support at \$634 per month, which reflects his child support deduction for A being modified upward to \$792 per month.<sup>8</sup>

Mr. P 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.<sup>9</sup> Mr. P indicated he is currently purchasing his own home and devotes any extra cash to fixing it up.

Ms. D's list of expenses indicates she has four children in the home, two of them hers. She listed minimal expenses and does not appear to have a vehicle.

**III. Discussion**

*A. Multiple Children*

Following an explanation of how the deduction for prior children works under Civil Rule 90.3(a)(1)(C), Mr. P stated he does not challenge CSSD's calculation of his child support in this case. Rather, he said 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 for two children. By logical extension, apparently Mr. P would

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<sup>5</sup> Exh. 2 at pgs. 14-15.

<sup>6</sup> Exh. 5; Exh. 2 at pg. 1.

<sup>7</sup> Exh. 5 at pg. 7.

<sup>8</sup> Exh. 3 at pg. 9.

<sup>9</sup> Obligor's document received on May 31, 2012.

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.

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).<sup>11</sup> In this case, Ms. D applied for or began receiving public assistance in September 2011, so Mr. P is thus obligated to pay support through CSSD beginning as of that month.

*B. Child Support Calculation*

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." Mr. P did not contest the calculation of his child support amount by CSSD, only the methodology of dealing with two children of separate mothers.

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 . . . ." This deduction is applicable in this case and CSSD has used it to calculate his support obligation. It is only a deduction from income, not a dollar-for-dollar credit, nor does it attempt to calculate support for prior children in the same amount.

Mr. P'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

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<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>11</sup> 15 AAC 125.105(a)(1)-(2).

for the older children.<sup>12</sup> Thus, Mr. P'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.<sup>13</sup> 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. P's child support for B at \$782 per month for 2011 and \$634 per month for 2012. The obligor's older child cannot be included in this case, but the calculation for B is reduced somewhat to reflect the support he pays in the other 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 establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>14</sup> The presence of "unusual circumstances" in a particular case also may be sufficient to establish "good cause" for a variation in the support award.<sup>15</sup>

Based on the evidence in its entirety, Mr. P'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. B is entitled to child support from Mr. P based on the obligor's income, and taking into consideration the deduction for supporting his older child.

## **IV. Conclusion**

Mr. P did not meet his burden of proving that CSSD's Amended Administrative Child and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). CSSD's

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<sup>12</sup> See Civil Rule 90.3(a)(1)(C).

<sup>13</sup> Civil Rule 90.3, Commentary VI.B.2.

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

<sup>15</sup> Civil Rule 90.3(c)(1).

calculations are correct and should be adopted. Mr. P has not shown unusual circumstances or good cause for a variance in the support amount calculated.

**V. Child Support Order**

- Mr. P is liable for child support for B in the amount of \$782 per month from September 2011 through December 2011; and \$634 per month from January 2012 through June 2012, and ongoing;
- All other provisions of CSSD's Amended Administrative Child and Medical Support Order dated April 24, 2012, remain in full force and effect.

DATED this 28<sup>th</sup> day of June, 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 16<sup>th</sup> day of June, 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.]