

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

IN THE MATTER OF:)

K L. J)

OAH No. 12-0127-CSS

CSSD No. 001092046

CORRECTED DECISION AND ORDER

I. Introduction

The obligor, K L. J, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 23, 2012. The obligee child is G, 14. The custodian is L M. K, f/n/a N.

The hearing was held on July 2, 2012. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. J's child support for G is modified to \$997 per month for one child, effective July 1, 2011. Mr. J's request for a variance under Civil Rule 90.3(c) based on a claim of financial hardship is denied.

II. Facts

A. Background

Mr. J's child support obligation for G was set at \$770 per month in 2007.¹ On June 10, 2011, Ms. N requested a modification review.² On June 15, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ CSSD issued a modification order on October 13, 2011, but it ordered support for two children instead of one.⁴ CSSD subsequently corrected the error in an Amended Modified Administrative Child Support and Medical Support Order issued on April 23, 2012, that modified Mr. J's child support to \$1,061 per month for one child, effective July 1, 2011.⁵ He appealed on May 9, 2012.⁶

B. Material Facts

Mr. J and Ms. K are the parents of G, 14. G lives with Ms. K full-time.

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 5.
⁵ Exh. 8.
⁶ Exh. 9.

According to the Alaska Department of Labor and Workforce Development (DOL), Mr. J has been employed by a drilling services company since early 2010.⁷ In 2010, his employer reported to the DOL that he had earned \$77,236.10.⁸ In 2011, his earnings were reported to be \$76,346.51.⁹ A child support calculation using his 2011 income, in addition to the 2011 PFD of \$1174, equals \$997 per month.¹⁰

Mr. J submitted documentation of his monthly expenses. They include a mortgage payment of \$1050 per month; \$250 for food; \$200 for airplane flights to his job site; \$375 for utilities, including a cell phone; \$200 for gasoline; \$50 for vehicle maintenance; \$60 for vehicle insurance; \$105 for home insurance; \$50 for entertainment expenses; \$150 for medical bills.¹¹ Mr. J has a three-year-old boy in the home and another child on the way.¹²

Ms. K has three children in the home: G, the child in this case, and two other children who are younger than G. Ms. K is married and her husband, H, is employed. Their regular monthly expenses include \$1100 for rent; \$1000 for food; \$107.40 for natural gas; \$154 for water; \$54 for trash pickup \$233 for electricity; \$145 for cable service; \$250 for cell phone; \$460 for the payment on a 2005 Dodge Caravan; \$420 for gasoline; \$40 for vehicle maintenance; \$165 for vehicle insurance; \$50 for entertainment; \$100 for personal care items; \$300 for medical expenses; \$100 for day care; and \$95 for the payments on three credit cards.¹³

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁴ 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. J’s child support was previously \$770 per month, so a child support calculation over \$885.50 would be sufficient to modify his child support obligation.¹⁵

⁷ Exh. 10.

⁸ *Id.*

⁹ *Id.*

¹⁰ Attachment A.

¹¹ Exh. 12.

¹² *Id.*

¹³ Exh. 13.

¹⁴ AS 25.27.190(e).

¹⁵ $\$770 \times 1.15 = \885.50 .

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of July 1, 2011.¹⁶

The person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁷

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.¹⁸ 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. J's child support was set at \$770 per month in 2007. After Ms. K requested the modification review, CSSD issued an order modifying Mr. J's support, but it was in error because it calculated support for two children.¹⁹

CSSD subsequently acknowledged its error and issued an amended modification order that set Mr. J's ongoing child support amount at \$1,061 per month.²⁰ This calculation was based on income of \$81,818.74, which CSSD estimated from his first and second quarters of 2011.²¹ Mr. J's actual income for 2011 was \$76,346.51.²² A corrected calculation based on this actual income figure results in a child support amount of \$997 per month, and includes the proper mandatory deductions for federal income taxes, Social Security and Medicaid.²³

Mr. J's modified child support is now correctly calculated. Whether Mr. J may be entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

B. 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

¹⁶ 15 AAC 125.321(d). In this case, the notice was issued on June 15, 2011. Exh. 3.

¹⁷ 15 AAC 05.030(h).

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁹ Exh. 5.

²⁰ Exh. 8.

²¹ Exh. 8 at pg. 6.

²² Exh. 10.

²³ Attachment A. Mr. J testified he pays \$475 per month for a family medical insurance plan, and he was unhappy with the \$82 medical credit CSSD used in its April 23, 2012 calculation. It was explained to Mr. J that he is entitled only to 50% of the premium he pays for G, pursuant to Civil Rule 90.3(d)(1). He is not entitled to a credit for insurance premiums he pays for other family members. If his cost for G's insurance goes up, Mr. J should notify CSSD so his caseworker can make the appropriate changes. The premium he pays on her behalf will be deducted from the \$997 per month figure calculated in Attachment A.

establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”²⁴ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).²⁵

Based on the evidence in its entirety, Mr. J has not proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Mr. J provided a list of his regular monthly expenses, and they do not appear to be unusually high. In addition, Mr. J testified that he could pay more than CSSD’s latest calculation, which is somewhat higher than the latest figure derived from his actual 2011 income. Mr. J stated that he bought a house last year and just could not save any money.

Ms. K’s financial situation is somewhat more modest, in that she and her husband are renting their house rather than purchasing it. In addition, their bills are higher when compared to Mr. J’s monthly expenses.

Under these circumstances, Mr. J has not shown by clear and convincing evidence that his child support should be lowered from the amount calculated under Civil Rule 90.3. He may have some difficulty paying all of his bills, but G is entitled to child support commensurate with Mr. J’s ability to pay, as calculated under Civil Rule 90.3.

IV. Conclusion

Mr. J did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the amount calculated under Civil Rule 90.3. Thus, a variance under Civil Rule 90.3(c) is not warranted in this case. The support amount calculated using his actual income is \$997 per month, and it should be adopted.

V. Child Support Order

- Mr. J’s child support obligation for G is modified to \$997 per month for one child, effective July 1, 2011, and ongoing;
- All other provisions of the Amended Modified Administrative Child Support and

²⁴ Civil Rule 90.3(c).

²⁵ See Civil Rule 90.3, Commentary VI.E.1.

Medical Support Order dated April 23, 2012, remain in full force and effect.

DATED this 11th day of September, 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 12th day of October, 2012.

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

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