

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

IN THE MATTER OF:	)	
	)	OAH No. 12-0150-CSS
N G. N	)	CSSD No. 001179039
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This matter involves N G. N's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 25, 2012. The obligee child is A, 5 years of age. The other party is U-O J.

The formal hearing was held on July 10, 2012. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order issued on April 25, 2012, is affirmed because the agency calculated Mr. N's child support based on his actual income for 2011. Mr. N's request for a variance under Civil Rule 90.3(c) based on financial hardship is denied.

**II. Facts**

*A. Procedural History*

Ms. J applied for child support services on September 12, 2011.<sup>1</sup> CSSD began the process of establishing Mr. N's support obligation by requesting financial information from him, which he provided.<sup>2</sup> CSSD issued an Administrative Child Support and Medical Support Order on December 19, 2011, which was served on Mr. N on March 7, 2012.<sup>3</sup> He requested an administrative review and the parties provided additional information,<sup>4</sup> after which CSSD issued an Amended Administrative Child and Medical Support Order on April 25, 2012, that set Mr. N's ongoing child support at \$477 per month for one child, with arrears of \$3,816 for the period from September 2011 through April 2012.<sup>5</sup> Mr. N appealed on May 16, 2012, asserting he

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exhs. 2-4.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exhs. 6-8.  
<sup>5</sup> Exh. 9.

cannot afford the amount calculated and that he would like a paternity test to confirm his paternity of the child.<sup>6</sup>

On September 11, 2012, the administrative law judge issued an Order for Paternity Testing. The order directed CSSD to provide paternity testing to the parties and for them to cooperate with the paternity testing process. On September 20, 2011, CSSD filed a Motion for Reconsideration. Based on CSSD's motion, the record in this appeal and controlling law, CSSD's motion is granted and the order for paternity testing has been reconsidered. That order is hereby vacated, as discussed in Section III below, and is no longer in effect.

*B. Material Facts*

Mr. N and Ms. J are the parents of A, who is currently five years of age. A lives with Ms. J full-time.

Mr. N and Ms. J executed an affidavit of paternity attesting to Mr. N's paternity of the child on May 28, 2007.<sup>7</sup> The signatures of the parties were verified by a notary when they signed the affidavit.<sup>8</sup> Mr. N does not remember signing a document regarding the child's paternity, nor does he remember a notary being present. Because the parties executed an affidavit of paternity, Mr. N's name was placed on A's birth certificate by the Bureau of Vital Statistics.<sup>9</sup>

Mr. N is employed as a bagger and stocker at a local grocery store; he does not have any other income. He began working full time during the summer of 2012. Prior to that, he worked part time for approximately 10 months before increasing to full time. He receives \$16 per hour, in addition to some overtime pay at the rate of \$24 per hour. Mr. N received \$19,877.30 in 2009; \$26,817.07 in 2010; and \$32,740.71 in 2011.<sup>10</sup> Mr. N verified that the income information provided by the Alaska Department of Labor is correct. CSSD calculated a child support amount

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<sup>6</sup> Exh. 10.

<sup>7</sup> Exh. 14.

<sup>8</sup> Exh. 10.

<sup>9</sup> See AS 18.50.160(e)(2). At the request of the administrative law judge, on or about August 21, 2012, Child Support Specialist Andrew Rawls viewed a certified copy of the affidavit of paternity signed by the parties on May 28, 2007. With his affidavit, Mr. Rawls also filed copies of three documents he asserts show images of Mr. N's signature for the administrative law judge to view *in camera* (in chambers) in order to independently verify his signature on the affidavit of paternity. The sealed envelope with these documents remains sealed; the administrative law judge has not viewed them. For purposes of this discussion, Mr. Rawls' affidavit that he personally viewed a certified copy of an affidavit of paternity on which the parties' signatures were verified by a notary public is sufficient to establish that Mr. N executed an affidavit of paternity that established his paternity of A.

<sup>10</sup> Exh. 17.

from the obligor's 2011 income at \$477 per month.<sup>11</sup> The calculation includes the 2011 PFD of \$1,174.

Mr. N is married. His wife, D, is employed full-time as a dispatcher and receives \$19.39 per hour. They have a three-year-old boy in the home and recently learned that D is pregnant with their second child.

Mr. N and his family live with his wife's in-laws. Their regular monthly expenses include \$600 for rent;<sup>12</sup> \$450 for food; \$100 for natural gas; \$140 for Internet; \$44 for telephone service; \$130 for cable; \$200 for cell phones; \$200 for gasoline; \$100 for vehicle maintenance; \$80 for vehicle insurance; \$180 for health insurance; \$200 for the payment on a credit card with a \$500 balance; and \$250 for child care.<sup>13</sup> D is a member of a Native corporation, but she only receives \$55 every three months.

Ms. J claims that Mr. N has a side business as a tattoo artist. She does not have any direct evidence of his business, primarily because her potential witness refused to testify. However, Mr. N did not contradict her testimony.

Ms. J is also employed and brings home about \$2,700 per month. Her regular monthly expenses include \$940 for rent; \$550 for food; \$151 for Internet and cable; \$60.48 for electricity; \$44.47 for telephone service; \$194.76 for a cell phone; \$195 for health insurance; \$15.99 for entertainment; \$150 for personal care items; \$50 for the payment on a credit card with a \$477 balance; \$325 for her student loan payment; and \$100 per week for child care, except during the summer months.<sup>14</sup>

### **III. Discussion**

Mr. N's primary issue regarding CSSD's child support order is a request for paternity testing. He acknowledged that the income information CSSD used for the support calculation is correct, but claims that he cannot afford the support amount calculated by CSSD. The person who files the appeal, in this case, Mr. N, has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.<sup>15</sup>

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<sup>11</sup> Exh. 9 at pg. 8.

<sup>12</sup> Mr. N claims he and his wife each pay \$600 for rent, for a total of \$1,200 per month.

<sup>13</sup> Exh. 15.

<sup>14</sup> Exh. 13.

<sup>15</sup> 15 AAC 05.030(h).

A. *Affidavit of Paternity*

Alaska Statute (AS) 25.27.166(a) allows CSSD to initiate proceedings to disestablish paternity of a child if a court has not already issued an order establishing the child's paternity. However, CSSD may not disestablish paternity for a child for whom genetic tests have been utilized to establish the child's parentage, or where the parents jointly signed an Affidavit of Paternity at any time after July 1, 1977.<sup>16</sup> According to the statutes, a signed affidavit of paternity completed on the appropriate form is considered a "legal finding of paternity for a child born out of wedlock."<sup>17</sup> The affidavit of paternity may be withdrawn only by the *earlier* of the following dates:

- (1) 60 days after the date that the person signed it, or
- (2) the date on which judicial or administrative procedures are initiated to establish child support in the form of periodic payments or health care coverage for, or to determine paternity of, the child who is the subject of the acknowledgement.<sup>[18]</sup>

After the earlier of the above time periods has passed, the party wishing to contest the acknowledgement of paternity has to do so in the Superior Court, and the challenge may only be made on the basis of fraud, duress, or material mistake.<sup>19</sup> The party wishing to have paternity testing conducted would have to move the court for an order for testing to be completed.

Therefore, neither CSSD nor the administrative law judge has the authority to order paternity testing or initiate proceedings seeking to disestablish Mr. N's paternity of A. For purposes of this administrative child support action, Mr. N's paternity of the child has been established. If the obligor still wants to pursue an action to have his paternity disestablished, he will have to file an action in court to do so.<sup>20</sup>

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<sup>16</sup> AS 25.27.166(a)(2); AS 25.20.050(a)(3).

<sup>17</sup> AS 25.20.050(1).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Under the relevant statutes, CSSD does not have the authority to formally disestablish Mr. N's paternity of A, but it was thought that paternity testing would facilitate resolution of this issue for the parties. However, CSSD's statutes and regulations do not provide for confirming paternity tests to be performed for case parties if paternity of the child has already been established by operation of law, such as in this case. Here, the affidavit of paternity became a "legal finding of paternity for a child born out of wedlock" under AS 25.20.050(1) after the period of time to withdraw the affidavit expired. Thus, it appears the Order for Paternity Testing, while intended to be helpful, actually was ill-advised. The administrative law judge regrets the delay the order caused.

*B. Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>21</sup> In general, this obligation begins when the child is born.<sup>22</sup> In administrative child support cases, CSSD's regulations require the agency to collect 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>23</sup> Ms. J applied for services in September 2011, so that is the first month for which Mr. N is obligated to support A through CSSD.<sup>24</sup>

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. CSSD calculated Mr. N's child support at \$477 per month.<sup>25</sup> He agreed the income CSSD used is correct and does not contest the support amount. Thus, the child support calculation of \$477 per month is correct. It is from this figure that his request to vary the amount based on hardship will be discussed.

*B. Hardship Variance*

The third issue in this case concerns whether Mr. N's child support obligation should be varied. 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>26</sup> The existence of "unusual circumstances" may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.<sup>27</sup> It is appropriate to consider all relevant evidence in order to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>28</sup>

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<sup>21</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>22</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>23</sup> 15 AAC 125.105(a)(1)-(2).

<sup>24</sup> Exh. 1.

<sup>25</sup> Exh. 9 at pg. 8.

<sup>26</sup> Civil Rule 90.3(c).

<sup>27</sup> Civil Rule 90.3(c)(1).

<sup>28</sup> Civil Rule 90.3, Commentary VI.B.

Based on all the evidence, Mr. N has not proven by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. There also appear to be no unusual circumstances in Mr. N's case. Both he and his wife are employed and their expenses are not excessive. Mr. N's request for a hardship variance should be denied.

#### **IV. Conclusion**

Mr. N 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). Nor did he prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced from the amount calculated by CSSD.

The child support figure of \$477 per month is correct because it is based on Mr. N's actual income and he agreed with CSSD's figures. The support amount should be adopted as of September 2011, when Ms. J applied for child support services on A's behalf. Since the support amount and effective date are set forth in CSSD's Amended Administrative Child and Medical Support Order, that order should be affirmed.

#### **V. Child Support Order**

- The Amended Administrative Child and Medical Support Order issued by CSSD on April 25, 2012 is affirmed;
- Mr. N is liable for child support for A in the amount of \$477 per month, effective as of September 2011, and ongoing;
- The Order for Paternity Testing dated September 11, 2012 is vacated.

DATED this 12<sup>th</sup> day of December, 2012.

Signed  
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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 13<sup>th</sup> day of January, 2013.

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

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