

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

IN THE MATTER OF:)

T J. T)

) OAH No. 12-0158-CSS

) CSSD No. 001175139

DECISION AND ORDER

I. Introduction

This case involves the obligor T J. T's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 15, 2012. The obligee child is B, 2. The custodian is B B. X.

The hearing was held on July 16, 2012. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, the Amended Administrative Child and Medical Support Order dated June 15, 2012, is affirmed. Mr. T's child support is set at \$874 per month for the period from April 2011 through December 2011, and \$835 per month for January 2012 forward. Mr. T's petition for a variance based on financial hardship pursuant to the "good cause" provisions of Civil Rule 90.3(c) is denied.

II. Facts

A. Procedural Background

Ms. X applied for child support for B in Connecticut on March 29, 2011,¹ and an interstate petition was transmitted to CSSD. CSSD initiated a child support action for Mr. T and subsequently issued an Amended Administrative Child and Medical Support Order that set his ongoing child support at \$835 per month, with arrears of \$13,110 for the period from April 2011 through June 2012.² Mr. T filed an appeal, asserting he has been trying to obtain DNA tests but that neither Alaska nor Connecticut would provide them.³

¹ Exh. 1 at pg. 16.

² Exh. 8.

³ Exh. 9.

*B. Material Facts*⁴

Mr. T and Ms. X were married in Connecticut in December 2009.⁵ B was born there in January 2010 and continues to live in Connecticut with her mother. B has never been to the state of Alaska. Mr. T came to Alaska in August 2010;⁶ he obtained a divorce in January 2011.⁷ Ms. X did not file an answer or otherwise appear in the divorce matter, so the court did not address the parties' marital estate or B, other than to state that she was born of the marriage.⁸

Mr. T is an E-4 in the military with 2+ years of service.⁹ He was deployed overseas for one year beginning in April 2011.¹⁰ During his deployment he received hazardous duty pay and a family separation allowance.¹¹

In 2011, Mr. T's base pay and other cash compensation totaled \$25,102.90.¹² In addition, on a monthly basis he received non-taxable benefits consisting of Basic Allowance for Subsistence (BAS) of \$325.04; Basic Allowance for Housing (BAH) of \$1,521; and Cost of Living Allowance (COLA) of \$550.25.¹³ The total of his wages and other entitlements for 2011 was \$53,858.38.¹⁴ When inserted into CSSD's online child support calculator, this income figure yields a support amount of \$874 per month.¹⁵

In 2012, Mr. T's base pay is \$2,046.30 per month.¹⁶ The total for one year is \$24,555.60.¹⁷ In addition, on a monthly basis he receives non-taxable benefits consisting of Basic Allowance for Subsistence (BAS) of \$348.44; Basic Allowance for Housing (BAH) of \$1,620; and Cost of Living Allowance (COLA) of \$632.92.¹⁸ The total of his wages and other

⁴ The material facts are taken from Mr. T's hearing testimony, unless another source is cited.

⁵ Exh. 1 at pg. 17.

⁶ Obligor's unnumbered supplemental exhibits, received July 16, 2012, at pg. 6 (2012 PFD application).

⁷ Exh. 1 at pg. 19.

⁸ Exh. 1 at pg. 18.

⁹ Exh. 7 at pg. 1.

¹⁰ Exh. 5 at pg. 24.

¹¹ See Exh. 8 at pg. 18.

¹² Exh. 8 at pg. 11.

¹³ Exh. 8 at pg. 11.

¹⁴ Exh. 8 at pg. 11.

¹⁵ Exh. 8 at pg. 10.

¹⁶ Exh. 8 at pg. 18.

¹⁷ Exh. 8 at pg. 17.

¹⁸ Exh. 8 at pg. 18.

entitlements for 2012 is estimated to be \$55,771.92.¹⁹ When inserted into CSSD's online child support calculator, this income figure yields a support amount of \$835 per month.²⁰

Mr. T lives with his wife, N, who is employed as a coffee barista. She works 20-30 hours per week and brings home about \$763 per month. Mr. T reported regular household expenses of \$1,620 for rent; \$180 for food; \$70 for Internet service; \$50 for cable; \$246 for two cell phones; \$331 for the payment on a 2010 Hyundai; \$180 for gasoline; \$25 for vehicle maintenance ($\$300 \div 12$); \$307.67 for vehicle insurance; \$160 for home insurance; \$60 for entertainment; \$80 for personal care items; \$189.89 for uncovered medical costs; \$204.63 for his Thrift Savings Plan (TSP) retirement; \$186.54 for "personal/housing" insurance; and \$164.95 for the payments on two credit cards.²¹

Mr. T's household expenses total \$4,055.68. A portion of these, about \$2,684.93, are "prepaid" for him through his housing allowance or the other allotments paid on his behalf; his retirement deduction is included in this list.²² This leaves his household with bills of \$1,370.75 per month that have to be paid with the family's available cash.²³

In order to pay his monthly child support of \$835 and meet the bills totaling \$1,370.75 that are not prepaid, Mr. T needs \$2,205.75 in cash.²⁴ His mid-month pay is \$806.03 and his end-of-month pay is \$818.92.²⁵ His wife's monthly net pay of \$763 brings their total available funds to \$2,387.95 per month.²⁶ After paying the child support and remaining bills, Mr. T is left with a positive balance of \$182.20.²⁷

Little is known of Ms. X's circumstances, other than she has been receiving public assistance benefits and food stamps on B's behalf since April 2011.

¹⁹ Exh. 8 at pg. 16.

²⁰ Exh. 8 at pg. 10.

²¹ Exh. 11 at pg. 1. Mr. T listed one credit card balance at \$2,859, but nothing for the other card.

²² Exh. 7 at pg. 1 (BAH of \$1,620 + allotments of \$860.30 + TSP of \$204.63 = \$2,684.93). Typically the TSP retirement amount would not be considered an "expense," but the obligor included it in his list of bills, so it was included in the arithmetic. This amount was also backed out of the bills he has to pay with cash because it is deducted from his gross income.

²³ Total bills of \$4,055.68 – prepaid bills of \$2,684.93 = \$1,370.75 bills remaining.

²⁴ Child support of \$835 + remaining bills of \$1,370.75 = \$2,205.75.

²⁵ Exh. 7 at pg. 1.

²⁶ $\$806.03 + \$818.92 + \$763 = \$2,387.95$.

²⁷ $\$2,387.95 - \$2,205.75 = \$182.20$. This analysis is tortured, to be sure, and will fluctuate with changes to Mr. T's bills and N's take home pay, but it is the best way to ascertain a military member's disposable income.

III. Discussion

Mr. T filed the appeal in this matter. He is not challenging the income determinations CSSD made or the child support calculations, other than to assert that the support amounts create a financial hardship for him and his wife. Rather, his primary issue on appeal concerns CSSD's denial of his petition for genetic testing.

As the party who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.²⁸

A. *B's paternity cannot be disestablished in Alaska*

CSSD's authorizing statute provides that the agency may seek to disestablish paternity of a child.²⁹ However, disestablishment proceedings cannot be initiated for any child. CSSD may not pursue disestablishment for a child whose paternity was determined by court order, genetic tests or an acknowledgment of paternity.³⁰ The agency's regulations repeat the limitations in the statute and further require that in order to disestablish an obligor's paternity, the child at issue must have been born in this state.³¹

Mr. T was married to B's mother when the child was born. In Alaska, the marriage of the parents creates a rebuttable presumption that the husband is the biological father of the child.³² Because the parents' marriage is not one of the circumstances in which disestablishment of paternity is disallowed under AS 25.27.166(a), Mr. T would have been allowed to file a petition to disestablish his paternity of B *had the child been born in Alaska*. Unfortunately, B was born in Connecticut. As a result, CSSD's statutes and regulations do not allow Mr. T to disestablish his paternity of the child through CSSD.

Mr. T is understandably frustrated with his unsuccessful attempts to resolve his paternity of B. He obtained a divorce in Alaska, but the court would not allow him to move for DNA testing here, stating that all matters relating to the child "must be brought before the court in the state where the child resides."³³ That would be Connecticut, but according to Mr. T, the child

²⁸ 15 AAC 05.030(h).1

²⁹ AS 25.27.166(a).

³⁰ AS 25.27.166(a).

³¹ 15 AAC 125.232(a)(3).

³² AS 18.50.160(d).

³³ Exh. 7 at pg. 2.

support agency in Connecticut sent him back to Alaska to address paternity in his divorce action because they had no case back there.³⁴

Without more information it is difficult to understand why Mr. T's attempts to disestablish his paternity of B have failed in Connecticut.³⁵ In any event, CSSD's statutes and regulations prevent the Alaska agency from accepting a petition to disestablish B's paternity because she was not born here. Mr. T will have to continue his efforts in B's home state of Connecticut.

B. Child support calculation

A parent is obligated both by statute and at common law to support his or her children.³⁶ 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.³⁷ In this case, Ms. X requested child support services in Connecticut on March 29, 2011, so Mr. T is obligated to pay support in this administrative child support action beginning in April 2011.³⁸ Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."³⁹ Using Mr. T's figures from his Leave and Earnings Statements (LES's), CSSD calculated his child support at \$874 per month for 2011 and \$835 per month for 2012 and ongoing.⁴⁰ These figures are correct because they are based on Mr. T's actual income figures and they were calculated pursuant to Civil Rule 90.3. The obligor testified he does not challenge CSSD's calculations. Rather, Mr. T claims that having to pay child support in those amounts creates a financial hardship for him and his wife.

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

³⁴ See obligor's appeal at Exh. 9.

³⁵ It may be that had Mr. T filed an original action for paternity disestablishment in the Connecticut court rather than seeking relief through the child support agency, he may have been successful. He may have to retain an attorney to get the matter resolved.

³⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

³⁷ 15 AAC 125.105(a)(1)-(2).

³⁸ See Exh. 1 at pg. 16.

³⁹ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”⁴¹ The presence of “unusual circumstances” in a particular case also may be sufficient to establish “good cause” for a variation in the support award.⁴² 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 primary custody provisions of Civil Rule 90.3(a).⁴³

The establishment of this child support order has undoubtedly created stress for Mr. T, especially given that N is only nominally employed and brings home less than \$1,000 per month. They have a substantial number of bills. That having been said, Mr. T has a duty to support his child. The Alaska Supreme Court has clearly stated that this duty takes priority over other debts and obligations.⁴⁴ B is entitled to receive child support in an amount commensurate with Mr. T’s ability to pay, as calculated pursuant to Civil Rule 90.3. That the obligor’s duty to support B is considered to be a higher priority is especially significant here, since Ms. X is in no better financial situation than Mr. T. Her monthly income is not sufficient to support her household and she is forced to rely on cash assistance and food stamps to support her family.

A close examination of the obligor’s finances reveals that the combination of his and N’s pay leaves them with a positive balance of approximately \$182.20 per month, after allocating payments for both his monthly child support and their bills. Of course, Mr. T will have to pay toward the arrears that have accrued in his case, but with some judicious budgeting they should be able to handle it.

Therefore, based on the evidence in its entirety, Mr. T did not prove by clear and convincing evidence that manifest injustice would result if the support amount calculated under Civil Rule 90.3 for B were not reduced.

IV. Conclusion

Mr. T did not meet his burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child and Medical Support Order was incorrect, as required by

⁴⁰ Exh. 8.

⁴¹ Civil Rule 90.3(c).

⁴² Civil Rule 90.3(c)(1).

⁴³ See Civil Rule 90.3, Commentary VI.E.1.

⁴⁴ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

15 AAC 05.030(h). He appealed the order primarily for the purpose of challenging CSSD's denial of his petition to disestablish paternity, but the agency's controlling law does not allow it to do so because B was born in Connecticut. Mr. T will have to pursue paternity disestablishment in the appropriate court in that state. Mr. T also did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not varied downward from the child support amounts calculated by CSSD. Thus, his request for a "good cause" variance under Civil Rule 90.3(c) is properly denied.

Mr. T's support obligation for B should be set at \$874 per month from April 2011 through December 2011, and \$835 per month from January 2012 forward. Since these are the figures CSSD set in its 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 June 15, 2012, is affirmed:

- Mr. T is liable for child support for B in the amount of \$874 per month from April 2011 through December 2011, and \$835 per month from January 2012 forward.

DATED this 6th day of December, 2012.

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 24th day of December, 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.]