

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

IN THE MATTER OF:	)	
	)	OAH No. 12-0327-CSS
K B. C	)	CSSD No. 001180517
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, K B. C, appealed an Amended Administrative Child and Medical Support Order that CSSD issued in her case on August 7, 2012. The child is V, 16. The custodian of record is K K.

The formal hearing was held on September 13, 2012. Both Ms. C and Mr. K participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. C's child support is set at \$289 per month from May 2011 through December 2011; and \$126 per month from January 2012 through November 2012, and ongoing. Ms. C is entitled to a credit for direct payments made to Mr. K in the amount of \$1,090.90. Finally, Ms. C's request for a good cause variance under Civil Rule 90.3(c) based on financial hardship is denied.

**II. Facts**

*A. Procedural History*

Mr. K applied for child support services in Louisiana in May 2011.<sup>1</sup> CSSD initiated the process of establishing Ms. C's child support obligation and issued an administrative child support order on April 18, 2012.<sup>2</sup> Ms. C requested an administrative review, after which CSSD issued an Amended Administrative Child Support and Medical Support Order on August 7, 2012. It set Ms. C's ongoing child support at \$385 per month, with arrears of \$3,704 from May

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<sup>1</sup> Exh. 1 at pg. 2.

<sup>2</sup> Exh. 4.

2011 through August 2012.<sup>3</sup> Ms. C appealed on August 16, 2012, arguing essentially that her current income is not as CSSD estimated and she has paid some support directly to Mr. K.<sup>4</sup>

*B. Material Facts*

Based on the record as a whole, the following facts are established by a preponderance of the evidence based on the testimony of Ms. C, Mr. K, and the documents submitted into evidence, as cited below.

Ms. C and Mr. K are the parents of V, 16. V lives with Mr. K in Louisiana, although the child lived with Ms. C until he was about ten years old and Mr. K paid child support. Ms. C exercises visitation with V and pays all of the expenses for her visitation travel to and from Louisiana.

Ms. C lives in No Name, Alaska with her husband, who is in the United States Coast Guard, and a second child younger than V. She is expecting her third child early in 2013. Ms. C has some medical complications related to her pregnancy, so about one month before her child is born, she and her husband will have to travel to Anchorage to await the birth while being close to advanced medical facilities.

Ms. C has an employment history in retail sales – her primary experience has been in commercial flooring. In 2009, she earned \$43,273.53; in 2010, \$4,501.20; and in 2011, 14,562.68.<sup>5</sup> Ms. C has done an extensive job search, looking for work paying about \$10 per hour, but there are few positions available in No Name and she has been unable to secure employment. Ms. C's job search has been reasonable, given her physical location in a community that is not on the main Alaska road system. Based on the evidence as a whole, she is not voluntarily and unreasonably unemployed.

Ms. C and Mr. K both submitted a statement of their regular monthly expenses.<sup>6</sup> Each family has two incomes and neither household has what would be considered extraordinary expenses. Ms. C has more credit card indebtedness than Mr. K.<sup>7</sup> Both households have two

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<sup>3</sup> Exh. 9.

<sup>4</sup> Exhs. 8 & 9.

<sup>5</sup> CSSD's Post-Hearing Brief (PstHB) at pg. 1.

<sup>6</sup> Exh. 11 at pg. 7; Exh. 12 at pg. 5.

<sup>7</sup> *Id.*

vehicles, but Mr. K's car payments are higher – nearly \$1,000 per month.<sup>8</sup> Mr. K and his wife are currently building a house.

Since May 2011, Ms. C has paid Mr. K, and possibly V, as well, for a significant amount of V's expenses. After the hearing, CSSD reduced Ms. C's payments to a single list and presented it in the agency's Post-hearing Brief.<sup>9</sup> Ms. C's payments total \$3,956.25, and cover a wide range of expense items for V. Of this total, Ms. C requested credit against her child support obligation of \$1,658.88. During the hearing, Mr. K agreed that Ms. C should receive credit for \$1,090.90 of the total, consisting of six specific line items for school lunches, child support, and baseball fees.<sup>10</sup>

### **III. Discussion**

Ms. C requested the formal hearing in this matter. Her primary challenge is to the income figure CSSD used to calculate her ongoing support obligation and the denial of credit for payments made directly to Mr. K. She also requested a good cause variance under Civil Rule 90.3(c). As the appealing party, Ms. C has the burden of proving by a preponderance of the evidence that CSSD's amended child support order is incorrect.<sup>11</sup>

#### *A. Time Period of Obligation*

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> In cases established by CSSD, the agency 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 children, up to six years prior to the date the action was initiated.<sup>13</sup> Mr. K applied for child support services in Louisiana in May 2011, so Ms. C is obligated to pay support through CSSD as of that month.

#### *B. Child support calculation*

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social

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<sup>8</sup> Exh. 11 at pg. 7.

<sup>9</sup> CSSD's PstHB at pg. 2, referencing Ms. C's documents in Exh. 3.

<sup>10</sup> *Id.*

<sup>11</sup> 15 AAC 05.030(h).

<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> 15 AAC 125.105(a)(1)-(2).

Security. CSSD correctly calculated Ms. C's child support for 2011 at \$289 per month, based on her actual income for the year totaling \$19,224.68, which was derived from wages and unemployment benefits.<sup>14</sup> CSSD also initially calculated Ms. C's 2012 and ongoing child support at \$174 and \$385 per month, respectfully, based on income imputed to Ms. C taken from occupational wage statistics.<sup>15</sup> These 2012 calculations are no longer accurate, as Ms. C has credibly testified to her inability to find employment in No Name and the medical problems she is having with her current pregnancy.

Mr. K asserts that Ms. C is voluntarily and unreasonably unemployed. If a parent is found to be voluntarily and unreasonably unemployed, his or her child support amount may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."<sup>16</sup>

In cases in which voluntary unemployment becomes an issue, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."<sup>17</sup> It is also necessary to determine whether the parent's unemployment or underemployment is unreasonable. An integral part of the analysis is whether the parent's lack of employment is a result of "economic factors," as in being laid off, or of "purely personal choices."<sup>18</sup> It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a noncustodial parent.<sup>19</sup> The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income to a party based on voluntary unemployment."<sup>20</sup>

After careful consideration, Mr. K's request to have Ms. C found voluntarily and unreasonably unemployed is denied. Ms. C proved she has consistently sought employment in No Name, the community where she currently resides. Her location there is a direct result of her husband's current duty station, not of a personal choice on her part to be unemployed. As a

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<sup>14</sup> Exh. 9 at pg. 8.

<sup>15</sup> Exh. 9 at pgs. 9 & 10.

<sup>16</sup> Civil Rule 90.3(a)(4).

<sup>17</sup> *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

<sup>18</sup> *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

<sup>19</sup> *Kowalski*, 806 P.2d at 1371.

<sup>20</sup> Civil Rule 90.3, Commentary III.C.

result, Ms. C cannot be faulted for not securing a job in a small Alaska town that does not have viable jobs for someone whose primary work experience is in selling commercial flooring.

On the other hand, Ms. C should be able to secure a half-time job paying the minimum wage. CSSD determined that in this type of work, Ms. C would earn \$8,060 in a calendar year.<sup>21</sup> This level of annual income is a reasonable assessment of Ms. C's ability to earn income and pay child support. A calculation taken from this annual income figure results in a child support amount of \$126 per month.<sup>22</sup> This should be Ms. C's 2012 and ongoing child support amount. However, because Ms. C's current medical condition may significantly change upon the birth of her child, the parties may want to consider a modification at some point in the future.

*C. Credit for Direct Payments*

Ms. C asserts she made direct payments totaling \$3,956.25 in 2011 and 2012. Ms. C did not request a credit for that total amount; she listed the total in order to demonstrate that she has been supporting V. Mr. K did not object to a credit for Ms. C regarding specific items totaling \$1,090.90, and as a result, she is entitled to those credits. The remaining \$2,865.35 is at issue.<sup>23</sup>

CSSD may give an obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payments were not made before the first date support is due in the administrative child support action.<sup>24</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>25</sup>

Ms. C did not meet her burden of proof as to the remaining \$2,865.35 paid to Mr. K and/or V. The bulk of the total amount not credited to her appears to be for Ms. C's visitation travel and gifts for V, such as spending money and clothing. Ms. C did not prove these expenditures directly helped Mr. K provide V's support, so she cannot be credited with them against her child support obligation.

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21 Exh. 15.

22 Exh. 15.

23  $\$3,956.25 - \$1,090.90 = \$2,865.35$ .

24 AS 25.27.020(b).

25 *Id.*

*D. Good Cause Variance Based on 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>26</sup> The existence of "unusual circumstances" may also provide a 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>

Based on the evidence in its entirety, Ms. C's situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. She did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

Ms. C's expenses appear to be on par with community norms, and she did not present sufficient testimony of extraordinary circumstances. Granted, Ms. C is currently going through a difficult pregnancy, but the evidence is that she will be able to return to full health once her child is born. At some point after that, it appears that Ms. C will attempt to return to the job market. Ms. C's child support should reflect half-time work paid at the minimum wage. Her child support should be set at \$126 per month so as to provide a meaningful amount for V's support. Thus, Ms. C's request for a hardship variance should be denied.

**IV. Conclusion**

Ms. C met her burden of proving that CSSD's Amended Administrative Child and Medical Support Order was incorrect. The 2011 child support amount was correctly calculated at \$289 per month, but the 2012 figure needed adjusting. It has been corrected by CSSD to reflect half-time annual income paid at the minimum wage and results in a child support amount of \$126 per month. Ms. C should be given credit for \$1,090.90 in direct payments made to Mr. K, but

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<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.

she is not entitled to a variance under Civil Rule 90.3(c) based on financial hardship. The correct 2011 and 2012 calculations should be adopted.

**V. Child Support Order**

- Ms. C is liable for child support for V in the amount of \$289 per month for May 2011 through December 2011; and \$126 per month from January 2012 through November 2012, and ongoing;
- Ms. C is eligible for a credit for direct payments made in the total amount of \$1,090.90, said credit to be allocated equally during the months from May 2011 through February 2012, when the payments were made;
- All other provisions of the Amended Administrative Child and Medical Support Order dated August 7, 2012 remain in full force and effect.

DATED this 5<sup>th</sup> day of November, 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 23<sup>rd</sup> day of November, 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.]