

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

IN THE MATTER OF: )

N D. N )

OAH No. 12-0376-CSS

CSSD No. 001180268

**REVISED DECISION AND ORDER**

**I. Introduction**

This matter involves N D. N's appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 30, 2012. The obligee child is F, 7. The other party is K M. L.

The formal hearing was held on October 1, 2012 and November 16, 2012. Both parties participated in the first hearing; Mr. N appeared for the second hearing. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded.

The proposed decision was issued on December 20, 2012. Ms. L filed a proposal for action. She argued that she was not asked to participate in the first hearing, and did not get notice of the supplemental hearing. The administrative law judge requested that the appeal be returned for a supplemental hearing, which Deputy Commissioner of Revenue Angela M. Rodell granted. The supplemental hearing occurred on March 7, 2013, with both parties and CSSD's representative again appearing by telephone.

Based on the record and after careful consideration, Mr. N is liable for child support for F in the amount of \$1,206 per month for July 2011 through December 2011; \$1,083 per month for January 2012 through November 2012; and \$717 per month, effective December 2012 and ongoing. 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. L began receiving public assistance on F's behalf in July 2011.<sup>1</sup> Nevada, her state of residence, initiated a petition for child support services to CSSD, which began the process of

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<sup>1</sup> Exh. 1 at pg. 12.

establishing Mr. N's support obligation.<sup>2</sup> CSSD established Mr. N's paternity of F on March 28, 2012 and subsequently issued an initial child support order.<sup>3</sup> He requested an administrative review and CSSD issued an Amended Administrative Child Support and Medical Support Order on July 30, 2012, that set his ongoing child support at \$1,085 per month for one child, with arrears of \$14,105 for the period from July 2011 through August 2012.<sup>4</sup> Mr. N appealed on August 22, 2012, asserting primarily that CSSD used incorrect income figures, he supports an older child, and the child support amount calculated creates a financial hardship for him.<sup>5</sup>

*B. Material Facts*

Mr. N and Ms. L are the parents of F, who is currently seven years of age. F lives with Ms. L full-time in Nevada.

Mr. N worked for several years as a Controller for No Name Corporate Services, Inc. In 2010, he earned \$98,747.12 from the corporation and in 2011, he received \$86,114.70.<sup>6</sup> The corporation decided to close its Anchorage office as of the end of 2012. As a result, Mr. N's last day of employment with No Name was November 15, 2012.

Mr. N's pay has decreased somewhat from his highest income in 2010. In 2012, he worked 32 hours per week and received approximately \$1,461.54 per week. His year-to-date gross wages as of the pay period ending September 22, 2012 were \$67,811.30.<sup>7</sup> He estimated he would receive eight additional weeks of pay from that date until his job ended. Eight weeks of pay equals \$11,692.32.<sup>8</sup> Adding that amount to his year-to-date income as of September 22<sup>nd</sup> yields estimated annual income from No Name of \$79,503.62.<sup>9</sup>

Because his job ended at the Native corporation, Mr. N and his wife decided to move to Georgia. Mr. N secured another job, but at a significantly lower rate of pay. He began working for No Name Duct Systems, Inc. (NND) on November 26, 2012. His annual salary with the firm is \$45,000 per year.<sup>10</sup> Mr. N testified his wife had recently secured employment in Georgia, but

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<sup>2</sup> Exhs. 2-4.

<sup>3</sup> Exhs. 5-6.

<sup>4</sup> Exhs. 7-9.

<sup>5</sup> Exh. 10.

<sup>6</sup> Exh. 11 at pg. 1.

<sup>7</sup> Exh. 13 at pg. 13.

<sup>8</sup>  $\$1,461.54 \times 8 = \$11,692.32$ .

<sup>9</sup>  $\$67,811.30 + \$11,692.32 = \$79,503.62$ .

<sup>10</sup> As noted in an e-mail from Mr. S X of No Name Duct Systems, Inc., dated November 6, 2012 at 9:27 a.m. The email message was copied and submitted to the OAH by Mr. N on November 13, 2012.

that they do not share bank accounts. He further testified that his house in Anchorage is near foreclosure and that he plans to file for bankruptcy. He had fairly high monthly expenses while still in Alaska,<sup>11</sup> but that included his mortgage and multiple credit cards, all of which are considered consumer debt. Ms. L has limited income and shared living expenses with roommates.<sup>12</sup>

Mr. N has two prior children, T and N, Jr. T is 20 years old and N is 17.<sup>13</sup> He lives with his mother, Y B-N, in western Alaska. N had regular visitation with Mr. N until his move to Georgia, so it is not known what impact Mr. N's move out of state will have on their time together. Mr. N and Ms. B-N were divorced in 2005 and at that time the court ordered him to pay her support of \$188.00 per week for two children.<sup>14</sup> However, Mr. N testified he did not pay the court-ordered amount. Rather, he and Ms. B-N had a verbal agreement for him to pay some of N's expenses and his travel to Anchorage for visitation. Mr. N was not able to document what he paid for N's expenses, having shredded his credit card receipts in anticipation of moving out of state. Mr. N did make a \$1,700 payment toward N's dental bill, but it was made on September 10, 2010 one year before his support obligation in this matter arose.<sup>15</sup>

### **III. Discussion**

Mr. N's primary issue regarding CSSD's order concerns the income figures CSSD used for his child support calculation. He also claims he supports an older child and that the support amount calculated by CSSD will create a financial hardship. 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>16</sup>

#### *A. Child Support Calculation/Prior Child*

A parent is obligated both by statute and at common law to support his or her children.<sup>17</sup> In general, this obligation begins when the child is born.<sup>18</sup> In administrative child support cases, CSSD's regulations require the agency to collect support from the date the custodial parent

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<sup>11</sup> See Exh. 14 at pg. 2.

<sup>12</sup> Exh. 15 at pgs. 3-4.

<sup>13</sup> Exh. 12 at pg. 1.

<sup>14</sup> Exh. 12 at pg. 3.

<sup>15</sup> Obligor's documents received on October 16, 2012, at pg. 4.

<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>18</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

requested child support services, or the date public assistance or foster care was initiated on behalf of the child.<sup>19</sup> Ms. L began receiving public assistance for F in July 2011, so that is the first month for which Mr. N is obligated to support F through CSSD.<sup>20</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. In its amended order, CSSD calculated Mr. N's 2011 child support at \$1,085 per month, based on his actual income for the year.<sup>21</sup> The calculation included a deduction for paying support for a prior child.

After the first session of the hearing, CSSD was asked to prepare another set of calculations for 2011 and 2012. The 2011 child support calculation is now \$1,206 per month,<sup>22</sup> based on Mr. N's actual total income for the year. For 2012, CSSD calculated his child support at \$1,083 per month, based on the agency's estimate of his total annual income and other benefits for the year.<sup>23</sup>

CSSD did not include the prior child deduction in either the 2011 or 2012 calculation prepared after the first hearing. According to Civil Rule 90.3(a)(1)(C), 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 . . . ." CSSD did not include this deduction in Mr. N's calculation. Mr. N testified that he has a prior child, N, for whom he has a court order for support, but he and the child's mother agreed instead that Mr. N would pay some of N's expenses and his travel to Anchorage for visitation. Now that Mr. N has moved out of state, their agreement is most likely out of date.

Mr. N was asked to document the expenses he makes on N's behalf, but stated he could not because he had shredded his credit card receipts in anticipation of moving out of state. He submitted a billing sheet that shows he paid \$1,700 toward N's dental bill, but that payment was made on September 10, 2010, almost one year before this child support case arose.<sup>24</sup> Since the payment was not made in the same time frame as his obligation to pay support through CSSD,

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<sup>19</sup> 15 AAC 125.105(a)(1)-(2).

<sup>20</sup> Exh. 1.

<sup>21</sup> Exh. 9 at pg. 8. Mr. N also receives VA disability benefits totaling \$5,628 per year.

<sup>22</sup> Exh. 18.

<sup>23</sup> Exh. 19.

<sup>24</sup> Obligor's documents received on October 16, 2012, at pg. 4.

and he could not document the expenses he made on N's behalf, Mr. N is not entitled to a deduction for supporting a prior child.

Mr. N's ongoing child support amount also should be addressed. He has moved to Georgia and is now earning \$45,000 annually from No Name Duct Systems. Mr. N should not be required to pay the child support amounts based on his earnings from No Name in Alaska. The corporation decided to close its Anchorage office as of the end of 2012, so Mr. N lost his job through circumstances not under his control. Thus, an ongoing child support amount should be calculated from his new annual income. Mr. N's move out of state occurred contemporaneously with the completion of his child support appeal, so it is appropriate to set an ongoing calculation in this decision rather than require the parties to file a petition for modification. CSSD suggested in its post-hearing filing that Mr. N should request a modification when he arrives in Georgia and becomes employed.<sup>25</sup> However, Mr. N established through copies of the emails he exchanged with his new employer that he secured employment before he left and was to earn an annual salary of \$45,000. His evidence proves it is more likely than not that Mr. N is currently earning that annual salary figure.

Using a salary amount of \$45,000 per year yields a support amount of \$717 per month.<sup>26</sup> As with the prior years, the calculation includes Mr. N's VA benefits that total \$5,628 annually. However, the Georgia state tax rate is unknown, so that minor deduction cannot be included, but this calculation is a much more accurate and reasonable representation of Mr. N's ability to pay support than one using his earnings at No Name in Alaska.

*B. Hardship Variance*

Finally, Mr. N claimed his child support obligation should be varied based on a 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>27</sup> The existence of "unusual circumstances" may also provide sufficient basis for a finding of good cause to vary the

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<sup>25</sup> See CSSD's Submission to Record at pg. 1.

<sup>26</sup> Attachment A.

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

calculated child support amount.<sup>28</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>29</sup>

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. Mr. N's ongoing child support has been determined to be \$717 per month. He should be able to pay that monthly amount from his current earnings in Georgia, especially now that his wife is working. All of the back child support he owes thus becomes absorbed into the arrears total, which is paid back on a monthly basis as a percentage of the total amount he owes. Mr. N's arrears are fairly substantial, given his income from No Name, but it will be easier for him to pay the arrears because the base child support amount will be calculated from his actual current income. In any event, Mr. N cannot establish by clear and convincing evidence that he has a financial hardship because he has moved and his current monthly living expenses are not in the record.<sup>30</sup>

#### **IV. Conclusion**

Mr. N met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His child support has been adjusted to reflect his actual income for 2011 and 2012 and is now correctly calculated at \$1,206 per month for 2011 and \$1,083 per month for January through November 2012. His ongoing child support should reflect his move out of state and his new job beginning as of December 2012. His annual salary in Georgia is \$45,000, which yields a child support amount of \$717 per month. These figures should be adopted.

Mr. N did not meet his burden of proving by clear and convincing evidence that manifest injustice will result in the absence of a variation of the amounts calculated under Civil Rule 90.3.

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

- Mr. N is liable for child support for F in the amount of \$1,206 per month for July 2011 through December 2011; \$1,083 per month for January 2012 through November 2012; and \$717 per month, effective December 2012 and ongoing;

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<sup>28</sup> Civil Rule 90.3(c)(1).

<sup>29</sup> Civil Rule 90.3, Commentary VI.B.

<sup>30</sup> See Exh. 14 at pg. 1, Mr. N's expenses checklist, which was submitted prior to his move.

- All other provisions of the Amended Administrative Child Support and Medical Support Order dated July 30, 2012, remain in full force and effect.

DATED this 14<sup>th</sup> day of March, 2013.

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 19<sup>th</sup> day of March, 2013.

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

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