

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

In the Matter of:	)	
	)	OAH No. 12-0898-CSS
D R. S	)	CSSD No. 001097211
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, D R. S, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 30, 2012. The obligee child is T, 13. The other party is U M. Q.

The hearing was held on December 10, 2012. Mr. S appeared by telephone; Ms. Q did not participate.<sup>1</sup> Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. S's child support for T is modified to \$574 per month, effective September 1, 2012, and ongoing. Mr. S's request for a variance under Civil Rule 90.3(c) based on a financial hardship is denied.

**II. Facts**

*A. Procedural Background*

Mr. S's child support obligation for T was set at \$253 per month in June 2000.<sup>2</sup> On August 6, 2012, Ms. Q initiated a modification review.<sup>3</sup> On August 17, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> Mr. S provided financial information.<sup>5</sup> On October 30, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S's ongoing child support to \$661 per month, effective September 1, 2012.<sup>6</sup> Mr. S filed an appeal on November 16, 2012, asserting that he pays support for another child according to an agreement he and the mother reached in

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<sup>1</sup> A telephone call placed to Ms. Q before the hearing went unanswered. A message was left for her to call the Office of Administrative Hearings (OAH), but she did not return the call. The record was subsequently opened for her to submit a list of monthly expenses, which she did.

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

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 4.

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

2001; he supports other children in the home; and he pays child care every week so his wife can study.<sup>7</sup>

*B. Material Facts*

Mr. S and Ms. Q are the parents of T, who is 13 years old. T lives full-time with Ms. Q. Mr. S lives in Virginia and has worked for the No Name Group, Inc., for several years. According to the Alaska Department of Labor and Workforce Development, he earned \$38,322 in 2010 and \$42,233 in 2011.<sup>8</sup> Mr. S submitted a paystub indicating that as of October 19, 2012, he had year-to-date earnings of \$34,319.15, plus “disability ins-gross” payments of \$231.42, for a total of \$34,550.57.<sup>9</sup> Using the wage information contained in this paystub, Mr. S’s estimated income for 2012 is \$44,276.90.<sup>10</sup> Mr. S is not an Alaska resident, so he does not receive a PFD, and he pays Virginia state income tax.<sup>11</sup> A child support amount calculated from his total estimated annual income is \$574 per month.<sup>12</sup>

Mr. S has lived with his girlfriend, N, since 2004; he refers to her as his wife. N is not currently employed because she is studying for her GED. She occasionally works for a temp agency, but her past employment includes 5 years on the production line at a factory.

N’s two children from a prior relationship live with her and Mr. S, in addition to their toddler, M, who is 2 years old. Mr. S has not adopted N’s children.

Mr. S’s list of monthly expenses includes \$500 for the rent and utilities on a basement apartment; \$400 for food; \$100 for eating out; \$465 for the payment on a 2011 Nissan; \$350 for gasoline; \$200 for vehicle maintenance; \$139 for vehicle insurance; \$50 for entertainment; \$50 for personal care items; \$103.65 for a former tax debt in Virginia; and \$100 for two cell phones.<sup>13</sup> Mr. S’s expenses worksheet also indicates that he pays child support of \$350 per

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

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

<sup>9</sup> Exh. 4 at pg. 3.

<sup>10</sup> Exh. 6 at pg. 6; Exh. 10. *See* Exh. 6 at pg. 4, which explains CSSD’s methodology for the calculation. The division divided \$34,550.57 by 21 pay periods to get an average of \$1,645.26 per pay period, which was multiplied by 26 pay periods to reach an estimated annual amount of \$42,776.90. CSSD added a one-time bonus of \$1,500, which was reflected on the paystub he provided, to reach a total annual income figure of \$44,276.90. Exh. 6 at pg. 4; Exh. 10.

<sup>11</sup> Exh. 4 at pg. 3.

<sup>12</sup> Exh. 10. The ALJ directed CSSD to prepare a revised calculation to reflect the state taxes Mr. S pays in Virginia. The \$574 per month amount is \$87 less than what CSSD calculated for the modification review. Other than the adjustment for state taxes, the calculations were generated from identical income figures. *See* Exh. 10.

<sup>13</sup> Obligor’s information received on December 10, 2012, and marked by the ALJ as Exh. 12.

month for another child named D, Jr., who is 11 years old and lives in New York.<sup>14</sup> However, the appeal form Mr. S filed states he pays \$300 per month, so the actual amount of child support he pays for D, Jr. is uncertain.<sup>15</sup>

Ms. Q also submitted an expenses checklist.<sup>16</sup> She has 4 children in the home, aged 11-18 years of age. Her list of monthly household expenses includes \$1,600 for housing; \$400 for food; \$180 for gas; \$49.99 for Internet; \$210 for electricity; \$60 for telephone service; \$49.99 for cable; \$139 for cell phone service; \$400 for the payment on a 2001 Lexus purchased in July 2012; \$120 for vehicle maintenance; \$147 for vehicle insurance; \$100 for entertainment; and \$100 for personal care items. She did not list an amount for gasoline.

### III. Discussion

#### A. *Child Support Calculation*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>17</sup> 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. S’s child support has been \$253 per month since June 2000. Thus, a child support calculation of \$290.95 or more would be sufficient to warrant modification in this case.<sup>18</sup>

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 September 1, 2012.<sup>19</sup> As the person who filed the appeal, Mr. S has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.<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, retirement and Social Security contributions.

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<sup>14</sup> Exh. 12.

<sup>15</sup> See Exh. 7. Mr. S also listed as an expense the child support he pays through CSSD. This has been backed out of his expenses list for the purpose of this analysis because Mr. S’s child support is paid by his employer from his gross income before he receives the net amount with which to pay his household expenses.

<sup>16</sup> Received on January 7, 2013, and marked by the ALJ as Exh. 13.

<sup>17</sup> AS 25.27.190(e).

<sup>18</sup>  $\$253 \times 115\% = \$290.95$ .

<sup>19</sup> 15 AAC 125.321(d). In this case, the notice was issued on August 17, 2012. Exh. 3.

<sup>20</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

For the modification review, CSSD estimated Mr. S's annual income at \$44,276.90,<sup>21</sup> which was derived from the paystub he provided. CSSD's modification order explained that his year-to-date income from a paystub dated October 19, 2012, was divided by 21 pay periods to get the average amount for each pay period, then multiplied by 26 pay periods to estimate his total annual income.<sup>22</sup> CSSD correctly did not add a 2012 PFD to his income because Mr. S is not an Alaska resident.<sup>23</sup> Mr. S's estimated annual income yields a modified child support amount of \$574 per month.<sup>24</sup> Because it is based on Mr. S's actual income for the most recent calendar year, this calculation is correct under Civil Rule 90.3.

*B. Deduction for Prior Child*

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. S's calculation. Mr. S testified that he pays support for another child, D, Jr., but he also said that the child is 11 years old. T, the obligee child in this case, is 13 years old, so D, Jr. is actually younger than T, and thus is not a "prior child" within the meaning of Civil Rule 90.3(a)(1)(C). Therefore, Mr. S is not entitled to a deduction from income for supporting a prior child.

Mr. S also requested consideration for his younger child, M. Civil Rule 90.3 states that in general, an obligor parent's child support obligation should not be reduced for that parent's *younger* children.<sup>25</sup> However, if the failure to reduce the support obligation would cause "substantial hardship" to the subsequent children, a reduction is allowed.<sup>26</sup> Whether Mr. S may be entitled to a reduction in the calculated amount based on a financial hardship is discussed below.

*C. Financial Hardship*

Mr. S claimed in his appeal that the calculated child support amount is too high, especially given the other children he supports and his total monthly expenses.

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

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<sup>21</sup> Exh. 10.

<sup>22</sup> See Exh. 6 at pg. 4.

<sup>23</sup> Exh. 10.

<sup>24</sup> Exh. 10.

<sup>25</sup> Civil Rule 90.3, Commentary VI.B.2.

<sup>26</sup> Civil Rule 90.3, Commentary VI.B.2.

calculated based on financial hardship, 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>

Based on all the evidence, Mr. S did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The upward modification of this child support order has undoubtedly created stress for Mr. S and his partner, especially given that he and N support three children in the home, two of whom are hers from a prior relationship. Mr. S obviously feels a moral imperative to support his “stepchildren,” but he has a legal obligation to support his oldest biological child, T. Mr. S’s duty to her takes priority over other debts and obligations.<sup>28</sup> T is entitled to receive child support in an amount commensurate with Mr. S’s ability to pay, as calculated pursuant to Civil Rule 90.3.

Mr. S may have to make household budgeting changes, take on a part-time job, or ask his partner to go back to work part-time. Based on the evidence in its entirety, however, Mr. S’s situation does not present “unusual circumstances” of the type contemplated by Civil Rule 90.3. He did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for T were not reduced. Therefore, his request for a variance under Civil Rule 90.3(c) based on a financial hardship should be denied.

#### **IV. Conclusion**

Mr. S did not meet his burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. CSSD correctly estimated his actual annual income and calculated his modified child support amount at \$574 per month pursuant to Civil Rule 90.3. Further, Mr. S did not present clear and convincing evidence that manifest injustice would result in the absence of a variation of this amount, so this calculation should be adopted, without variation under Civil Rule 90.3(c), as of September 1, 2012.

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

- Mr. S’s child support for T is modified to \$574 per month, effective September 1, 2012, and ongoing;

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

<sup>28</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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

DATED this 30<sup>th</sup> day of January, 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 February, 2013.

By: Signed

\_\_\_\_\_  
Signature

Kay L. Howard

\_\_\_\_\_  
Name

Administrative Law Judge

\_\_\_\_\_  
Title

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