

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

IN THE MATTER OF	)	OAH No. 12-0915-CSS
U T. S	)	CSSD No. 001065436
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**DECISION AND ORDER**

**I. Introduction**

This case is U T. S’s appeal of an order issued by the Child Support Services Division (Division), which denied his request to lower his monthly child support obligation. The order being appealed is the Division’s Decision on Request for Modification Review, which denied Mr. S’s petition for a downward modification of his ongoing child support order for his children, F and C.

On December 13, 2012, a hearing was held to consider Mr. S’s appeal. W B, the custodial parent, did not participate.<sup>1</sup> Mr. S did participate. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s current order must be modified in order to prevent an injustice to the two younger children living in his home. Mr. S’s ongoing child support obligation for F and C should be reduced from \$223.67 per month, to \$140.48, so that the very limited amount that is available to support Mr. S’s six children of three different relationships from his low income is distributed more equitably.

**II. Facts**

This case is a modification action.<sup>2</sup> The Division denied Mr. S’s request for modification review. Mr. S’s current ongoing child support was set in 2002.<sup>3</sup>

The Division first granted Mr. S’s request for a downward modification setting ongoing

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<sup>1</sup> Ms. B did not provide a phone number for the hearing as instructed on the notice sent to her and there was no answer at her phone numbers of record when she was called at the time set for the hearing.

<sup>2</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>3</sup> Exhibit 1.

child support at \$155 per month. Mr. S appealed.<sup>4</sup>

After the Division granted his request for a downward modification, Mr. S requested a formal hearing.<sup>5</sup> The appeal was remanded to recalculate Mr. S's monthly obligation to correct the Division's failure to properly account for all Mr. S's children in its calculation. The Division recalculated Mr. S's child support. These calculations resulted in a monthly child support obligation of \$212.60 for F and C.<sup>6</sup>

This calculation included deductions from income for the child support that he would be required to pay for other children, T and L if his support was recalculated applying the Alaska law. The Division then determined that there has not been a change in circumstances that would justify a modification of Mr. S's child support for F and C. Mr. S again requested a formal hearing.<sup>7</sup>

At the hearing, Mr. S provided information about the financial circumstance of his household.<sup>8</sup> Mr. S lives in No Name, Alaska. He works about 30 hours per week at \$8 per hour for the local government. Mr. S's wife does not work. Mr. S has another child support order for T and L who have a different mother than F and C. This order is a Washington State court order for \$354 per month. T is older than F and C. L is older than C, but younger than F. Mr. S also has two younger children living with him. This means that Mr. S has six children who are dependent on him for support. Mr. S's household receives food stamps and energy assistance, but no cash grants of public assistance. Ms. B, the mother of F and C, also lives in No Name. Ms. B lives with her parents and the children. Ms. B has no other children, does not work and is not currently receiving public assistance.<sup>9</sup>

Mr. S has not succeeded in having this Washington order for T and L modified due to his failure to timely provide income information to the Division.<sup>10</sup>

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<sup>4</sup> Exhibit 2.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibits 7.

<sup>8</sup> Exhibit A & Recording of Hearing.

<sup>9</sup> Recording of Hearing.

<sup>10</sup> Recording of Hearing.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. S, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>11</sup> Mr. S showed that the Division's determination that his ongoing child support obligation for F and C should not be modified was incorrect.<sup>12</sup>

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>13</sup> The evidence provided Mr. S does show that a material change of circumstances has occurred since Mr. S's ongoing child support was set at \$223.67 per month for two children in 2002. Mr. S now has two additional children to support in his home and his wife is not working. The Division calculated that Mr. S's ongoing child support would be \$212.60 per month using his current income with deductions for T and L. Although there are some problems with this calculation as it does not use the actual amount of the court order or the amounts collected, this calculation represents a diligent effort on the part of the Division to calculate support in the unusual circumstances of this case. One of the children in the Washington order is not older than both of the children in this Alaska order. Because the amount in this latest calculation, which attempted to account for all Mr. S's children, \$212.60 per month is not a 15% change from the monthly amount in the current order, \$223.67, the Division declined the request for modification after the remand. This approach, however, ignores the unusual circumstance of this case and the need to adjust the order to prevent a clear injustice.

There is clear and convincing evidence in the record of unusual circumstances in this case. Alaska Civil Rule 90.3 provides that a child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."<sup>14</sup> Good cause includes a finding of unusual circumstances.<sup>15</sup>

To understand the unusual circumstances of this case, one must consider the full extent of Mr. S's obligation to support children of different relationships. Mr. S has six children with

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

<sup>12</sup> Recording of Hearing.

<sup>13</sup> Alaska Civil Rule 90.3(h)(1).

<sup>14</sup> Alaska Civil Rule 90.3(c).

three different mothers. He supports two children in his home with with no financial support from the child's mother, his wife, who does not work. Mr. S also has two separate child support orders, including this one. Those orders include children who are both older and younger than children in the other order. The two orders are from different states, which have different rules for calculating child support. Injustice is caused by the way the Division's good faith attempt to apply the usual percentage of income approach with deductions only for older children of prior relationships would impact the youngest children in this case.

Alaska Civil Rule 90.3(a)(2) appears to recognize the hard reality that it becomes progressively less just and more counter-productive to attempt to charge a noncustodial parent much more than 33% of his or her adjusted income for ongoing child support. This recognition is reflected in the Rule's reduction of the increased additional support for each child after the third child to a mere 3% of the obligor's adjusted income.

The Division's attempt at strict adherence to the support guidelines of Civil Rule 90.3(a) with so many children with the same low income non-custodial parent and different custodial parents has resulted in a total support obligation that clearly works an injustice to the children living in Mr. S's household.

Even setting aside the complications due to the relative ages of the children not living in the home, the oldest children would receive a disproportionately large percentage of Mr. S's limited income with no deduction for the other children, under Civil Rule 90.3(a). The second set of children would then receive a large percentage of what is left after deductions for older children. The youngest set of children, who are living in Mr. S's home, does not result in any reduction of his child support orders for his older children. Even this complicated and unjust distribution of the available income would not quite follow Civil Rule 90.3(a) because one of the children in the Washington family is younger than one of the children one of the Alaska families. Mr. S and Ms. B both live in a remote village where employment opportunities are limited.

Manifest injustice will result if Mr. S's child support is set by continuing to apply Civil Rule 90.3(a) calculations in Mr. S's two different orders. A different approach is required to avoid injustice. Mr. S has very little income to live on and share with his six children. It is clear

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<sup>15</sup> Civil Rule 90.3(c)(1)(A).

that normal application of the child support guidelines will not result in a fair or workable distribution of that limited income. To avoid injustice, all of Mr. S's children should be treated as if they were in one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all six children were one family, with one custodial parent and one support order, Mr. S's total obligation would be set at 42% of his adjusted income. This part of his income would then be divided evenly between his six children.

Even this approach will leave Mr. S's household with very little to live on. However, I believe that this is the best approach to use in this case. Mr. S's income information shows that the Division provided a reasonable estimate of his annual adjusted gross income at \$12,040.68 in its calculations at exhibit 9, page 1. This means that \$1003.39 is Mr. S's monthly adjusted gross income. If 42% of this monthly adjusted gross income, that is, \$421.42 is divided between the six children, \$70.24, is the amount that should be awarded for each of Mr. S's children. Using this approach results in a monthly obligation of \$140.48 for F and C. This reduction in the current order may be small but with such a low income for a household of four, the change is significant. It is also to be hoped that Mr. S will be able follow through on a modification request of his Washington order for T and L and ask that the same the approach be used.

The adjusted ongoing monthly amount for the two children in this order, \$140.48, reduces the outstanding support order by more than 15 percent.<sup>16</sup>

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification would be effective May 1, 2012, because the petition was issued in April of 2012.

#### **IV. Conclusion**

I conclude that Mr. S's request for a downward modification of his ongoing child support should be granted. Mr. S's modified ongoing child support should be set at \$140.48 per month. The child support amount in this order is calculated using the third party custody formula in Civil Rule 90.3(i) after a finding of unusual circumstances under Civil Rule 90.3(c).

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

1. The Division's Decision on Request for Modification Review issued on November 14,

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<sup>16</sup> Alaska Civil Rule 90.3, Commentary X.

2012, is vacated.

2. The Modified Administrative Child Support and Medical Support order issued on July 3, 2012 is now back in effect except that Mr. S's modified ongoing child support for F and C is set in the monthly amount of at \$140.48, effective May 1, 2012.

DATED this 17<sup>th</sup> day of January 2013.

By: Signed  
Mark T. Handley  
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 6<sup>th</sup> day of February, 2013.

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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