

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

IN THE MATTER OF:	)	
	)	OAH No. 13-0058-CSS
T D	)	CSSD No. 001136049
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is T D’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. This order denied Mr. D’s petition for a downward modification of his ongoing child support order for his child, L. This order was issued on December 10, 2012.

On February 4, 2012, a hearing was held to consider Mr. D’s appeal. M J, the custodial parent, did not participate.<sup>1</sup> Mr. D participated. 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 order should be upheld. Mr. D’s ongoing child support obligation for L should remain at \$359 per month, because there has not yet been a change in the parties’ circumstances that would justify a modification of child support.

**II. Facts**

This case is a modification action.<sup>2</sup> The Division denied Mr. D’s request for modification review because the Division determined that there was not a material change in Mr. D’s ongoing child support amount based on Mr. D’s 2012 reported income. Mr. D’s current ongoing child support was set based on an estimate of his income in 2009.<sup>3</sup>

The Division denied Mr. D’s request for a downward modification, because, based on the information he provided on his current income, the Division calculated that his child support would increase to \$471 per month. This amount is not a 15% increase from the current amount when the medical credit is factored in, so the Division did not modify Mr. D’s ongoing child

---

<sup>1</sup> Ms. J 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.

support obligation for L.<sup>4</sup> After the Division denied his request for a downward modification, Mr. D requested a formal hearing.<sup>5</sup>

In 2012 Mr. D earned about \$33,321.99.<sup>6</sup> Mr. D's ongoing child support was set in 2010 based on his 2009 income of \$25,470.<sup>7</sup> Mr. D did not assert that he would probably make less than this amount in 2013. Mr. D is a car salesman, whose income depends of the sales that he makes, but his reported annual income was between \$24,000 and \$28,000 between 2009 and 2011.<sup>8</sup> He has no children living with him. He lives by himself.<sup>9</sup> Mr. D has a child support order for another child, who is younger than L for \$534 per month. Mr. D is working getting this order reduced as well. Mr. D owes thousands of dollars in arrears on both cases. Mr. D explained he is having difficulty making ends meet with all the child support that is being withheld to from his pay.<sup>10</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. D, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>11</sup> At the hearing, Mr. D did not show that the Division's determination that his ongoing child support obligation for L 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 rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.<sup>14</sup> The evidence in the record shows that a material change of circumstances has not occurred since Mr. D's ongoing child support was set at \$359 per month in 2010, and that if child support was modified, an increase, rather than a decrease,

---

<sup>3</sup> Exhibits 1.  
<sup>4</sup> Exhibits 2-4.  
<sup>5</sup> Exhibits 5.  
<sup>6</sup> Exhibits 4.  
<sup>7</sup> Exhibits 4.  
<sup>8</sup> Exhibits 7, page 1.  
<sup>9</sup> Recording of Hearing-Testimony of Mr. D.  
<sup>10</sup> Recording of Hearing.  
<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).

would probably be required by Alaska child support law.

Alaska law provides that child support should be calculated based on the noncustodial parent's total income from all sources, less a very limited number of expenses.<sup>15</sup> Child support should be calculated based on the noncustodial parent's current annual income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>16</sup>

Mr. D's did not show that it would be unjust to require him to continue to pay \$359 per month in ongoing child support. Mr. D's income would result in a higher monthly obligation if a modification was appropriate at this time. Mr. D did not show that he will be unable to support himself if his ongoing child support for L is not modified downward Mr. D's has no children in his household. Mr. D needs to continue to work on his efforts to modify his child for his younger child. Mr. D may also wish to seek to reduce the withholding on his arrears for that order as well. Mr. D financial plight is primarily due to his need to reduce the ongoing amount for the younger child and to reduce the withholding on his arrears. Ongoing child support take precedence over withholding for arrears. This is the money that goes to pay Mr. D's share of the support L needs for her current living expenses.<sup>17</sup>

#### **IV. Conclusion**

I conclude that the Division correctly denied Mr. D's request for a downward modification of his ongoing child support. The child support amount in his current order was calculated using the primary custody formula in Civil Rule 90.3(a).

---

<sup>14</sup> Alaska Civil Rule 90.3, Commentary X.

<sup>15</sup> Alaska Civil Rule 90.3 Commentary III.A & D.

<sup>16</sup> Alaska Civil Rule 90.3(c).

<sup>17</sup> Recording of Hearing.

**V. Child Support Order**

The Division’s Decision on Request for Modification Review issued on December 10, 2012, is affirmed.

DATED this 5<sup>th</sup> day of February 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 26<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.]