

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

In the Matter of:	)	
	)	OAH No. 13-0549-CSS
K C. B	)	CSSD No. 001157180
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, K C. B, appeals a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on March 28, 2013. The custodian of record is U G. N, and the obligee child is K, who is four years old.

A hearing was held on May 13, 2013. Both Mr. B and Ms. N participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

Based on the evidence in the record, Mr. B's child support is modified to \$596 per month, effective March 1, 2013, and ongoing.

**II. Facts**

Mr. B's child support obligation for K was set at \$290 per month in May 2011.<sup>1</sup> On February 8, 2013, Ms. N initiated a modification review of the order.<sup>2</sup> On February 15, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. B did not provide income information, so CSSD obtained it from his employer.<sup>4</sup> On March 28, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B's ongoing support to \$935 per month, effective March 1, 2013.<sup>5</sup> He appealed on April 12, 2013.<sup>6</sup>

Prior to the hearing, CSSD submitted a revised child support calculation of \$596 per month, based on Mr. B's April 2013 Leave and Earnings Statement (LES).<sup>7</sup> The calculation includes a deduction from income for supporting two prior children in the home.

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 6.  
<sup>6</sup> Exh. 7.  
<sup>7</sup> Exh. 9.

Mr. B did not challenge the underlying factual basis for CSSD's modification order. He is an E-6 in the military with 14 years of service.<sup>8</sup> His gross income for 2013 is estimated at \$62,302.44, which includes his base pay and the in-kind value of his military benefits.<sup>9</sup>

Mr. B is married and has four children in the home – two of them are older than K and two of them are younger.

### **III. Discussion**

#### *A. Applicable Law*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>10</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. B's child support has been \$290 per month since 2011. Thus, a child support calculation of \$333.50 or more would be sufficient to warrant modification in this case.<sup>11</sup>

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.<sup>12</sup> In this case, the notice was issued on February 15, 2013, so a modification would be effective as of March 1, 2013.<sup>13</sup>

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.<sup>14</sup> Mr. B filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>15</sup>

#### *A. Deduction for Child of Prior Relationship*

Mr. B appealed CSSD's modification order for one reason – he is requesting a deduction from income for all four of his biological children who are living in the home. Two of these children are older than K and two of them are younger. CSSD's revised child support calculation of \$596 per month includes a deduction for Mr. B's two older children, but not the two younger children. Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction

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

<sup>9</sup> Exh. 9 at pg. 1.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> \$290 x 1.15 = \$333.50.

<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> Exh. 3.

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> 2 AAC 64.290(e).

from income for the cost of providing support “for children from prior relationships living with the parent.”<sup>16</sup>

Mr. B claims that he should be entitled to the deduction for all four of his children in the home because they are the children of his wife and their relationship began prior to Mr. B’s relationship with Ms. N. CSSD’s position is that a “prior relationship” is determined solely from the birth of the children, and that in this case, Mr. B is not entitled to a deduction from income for all four of his children in the home, just the older two.

Relationships can be simultaneous. They can also end and then start anew. Marriages can continue to exist during the time when one parent has a separate relationship with someone else that results in the birth of a child that is younger than one child of the marriage and older than another child of that marriage. What is generally true, however, is that some form of relationship exists at the time a child is conceived, and that the child is born approximately nine months later. The “relationship” referred to in Civil Rule 90.3 is the physical relationship that resulted in the child’s conception, regardless of whether there was a marriage, partnership, or any other type of relationship between the parents at the time.

Using this definition of “prior relationship” supports Civil Rule 90.3’s goal of encouraging people not to make lifestyle choices to the detriment of the obligation to support their children. The support obligation for an older child should not be reduced simply because a parent decided to have subsequent children.<sup>17</sup> While it is true that an obligor parent may not be aware of the existence of another child at the time he decides to have subsequent children, but in many cases a parent is fully aware of his or her legal obligation to support an existing child at the time he or she chooses to have a subsequent child. Using the birth date of each child as a bright line rule will help parents understand which child comes first in terms of their financial responsibilities when making subsequent choices about having additional children. It will also make it possible for CSSD to efficiently and consistently enforce the applicable child support statutes and regulations. Absent a bright line rule of this sort, CSSD would need to inquire into the details of the parents’ relationships to determine which relationship began first, regardless of the birth order of the children.

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<sup>16</sup> Civil Rule 90.3(a)(1)(D).

<sup>17</sup> See *In re V.S.*, OAH No. 11-0271-CSS (Dept. of Revenue 2011) page 4; Civil Rule 90.3 Commentary VI.B.2.

In the absence of persuasive evidence to the contrary, the birth order of the children is a reasonable proxy to identify the child of a prior relationship.<sup>18</sup> Because two of Mr. B's children from his marriage are older than K, he is entitled to a deduction from income for supporting them in the calculation of his child support obligation for K. He is not entitled to a deduction from income for supporting his two younger children in the home.

#### **IV. Conclusion**

Mr. B met his burden of proving that the Modified Administrative Child Support and Medical Support Order was incorrect. He is entitled to a deduction from income for supporting two prior children in the home, which results in a child support amount of \$596 per month. This amount is calculated pursuant to Civil Rule 90.3, without variance, and should be adopted.

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

- Mr. B is liable for modified ongoing child support in the amount of \$596 per month, effective March 1, 2013, and ongoing;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated March 28, 2013 remain in full force and effect.

DATED this 10<sup>th</sup> day of June, 2013.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>18</sup> A premature birth is one example of when date of birth might not accurately establish which child is the child of a prior relationship. Another exception applies when a child is adopted. *See In re J.W.L III.*, OAH No. 11-0382-CSS (Dept. of Revenue 2012), page 6. In that situation, the adopting parents have made an intentional decision to bring another child into the family with knowledge that they may have an existing financial obligation for other children. Regardless of the relative ages of the children, the children the adoptive parents are already supporting should not have that support reduced because of the parents' lifestyle choice to adopt a child.

### 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 28<sup>th</sup> day of June, 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.]