

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

IN THE MATTER OF:)

X H. T)

) OAH No. 13-0613-CSS

) CSSD No. 001170299

DECISION AND ORDER

I. Introduction

The obligor, X H. T, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 21, 2013. The children in this case are J, 18; B, 12; and C and R, 10 year-old twins. This is a foster care case, so the other party to the appeal is the State of Alaska.

The formal hearing in this appeal had several sessions, the last one on August 12, 2013. Mr. T appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, the child support amounts in CSSD's Amended Modified Administrative Child Support and Medical Support Order dated March 21, 2013 are vacated. Mr. T's child support remains at \$12.50 per child per month, for each child not living in the home, the amount set *In the Matter of X H. T*, OAH No. 11-0054-CSS (Commissioner of Revenue May 2011).

Because J is being added to Mr. T's child support obligation, CSSD is entitled to collect this amount from him for J as of February 2011, the first month after J was placed in state custody. Finally, Mr. T's child support is suspended as of June 7, 2013, the date J was returned to Mr. T's custody.

II. Facts

Beginning in the fall of 2010, Mr. T's three younger children were placed in foster care.¹ J remained in the home until January 28, 2011, when he was taken into state custody and eventually placed in residential treatment. He was out of the home until June 7, 2013, when he

¹ The history of Mr. T's case is set forth *In the Matter of X H. T*, OAH No. 11-0054-CSS (Commissioner of Revenue May 2011). The remainder of the factual findings are based on Mr. T's testimony unless otherwise indicated.

was discharged into Mr. T's custody.² J has been diagnosed with Schizophrenia and Attention Deficit Hyperactivity Disorder (ADHD). He currently remains in the family home, but because he is now 18, Mr. T is planning to petition the court for ongoing guardianship of his son. The purpose of this is to be able to keep J in the home and monitor his behavior. Mr. T reported that J has been approved for SSI benefits.

Mr. T and his family live in No Name in two attached cabins. They have no running water and have to drive into No Name for showers and to do laundry. Due to J's behavioral history, he is not allowed to live in the main house with his younger siblings. He sleeps in a motorhome on the property that gets electricity from the main house.³ Mr. T's wife, L, is disabled and cannot work. The family has monthly expenses that total \$2,635,⁴ which equals approximately \$31,620 per year.⁵

Mr. T is intermittently employed in the construction industry. He never works a full year and has to rely on unemployment benefits while he is not working. His recent earnings from work are as follows: \$16,692.94 in 2010; \$18,552.66 in 2011; \$30,616.57 in 2012; and \$16,791.79 thus far in 2013.⁶ In 2011, he took a one-time draw from his retirement in order to pay bills. The amount was \$30,000, from which \$6,000 was deducted for taxes prior to the distribution. Additional draws are not available.

This is an "add-a-kid" case that increases Mr. T's support arrears from three children to four children for the period from February 2011, when J went into state custody, until November 2012, just before the effective date of the modification. CSSD correctly determined, based on his actual income for those two years, that Mr. T would owe an additional \$129 per month for 2011⁷ and \$86 per month for 2012.⁸ CSSD then determined that as of December 1, 2012, Mr. T would owe ongoing support of \$258 per month for one child, J, since all of his other children had been returned to the home by that time.⁹ CSSD suspended Mr. T's support obligation as of June

² See Transfer and Discharge Summary, showing date of J's discharge as June 3, 2013. Mr. T drove to Anchorage to pick him up on Friday, June 7, 2013 (Mr. T's hearing testimony).

³ See Exh. 9 at pg. 3, a letter from J's probation officer.

⁴ Exh. 9, as filled out by Mr. T.

⁵ $\$2,635 \times 12 = \$31,620$.

⁶ Exh. 10 at pg. 5.

⁷ The four-child amount of \$1,542 minus the three-child amount of \$1,413 = \$129. See Exh. 7 at pg. 6.

⁸ The four-child amount of \$1,034 minus the three-child amount of \$948 = \$86. See Exh. 7 at pg. 7.

⁹ Exh. 7 at pg. 8.

7, 2013, the date J returned to his custody, so the \$258 amount was to be collected only for December 2012 through June 2013. These calculations are correct.

III. Discussion

A. Modification Overview

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ If the newly calculated 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. The previous order in Mr. T’s case set his child support at \$12.50 per month per child in 2011, which is essentially a minimum order of \$50 per month, divided by four children.¹¹ CSSD calculated Mr. T’s modified child support at \$258 per month for one child in a third-party situation. If adopted, that increase would be sufficient to modify Mr. T’s child support, as it is over five times the amount of the prior minimum order.

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹² CSSD issued the notice in Mr. T’s case on November 29, 2012, so any modification would be effective as of December 1, 2012.¹³

B. Good Cause Reduction

Mr. T did not contest the accuracy of the calculations CSSD prepared in order to add J to his previous child support order. His primary argument on appeal is that, based on his family’s circumstances, he cannot afford the increase.

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.”¹⁴

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case.¹⁵ In this appeal, several factors should be

¹⁰ AS 25.27.190(e).

¹¹ Exh. 3.

¹² 15 AAC 125.321(d).

¹³ Exh. 4.

¹⁴ Civil Rule 90.3(c).

¹⁵ Civil Rule 90.3, Commentary VI.E.1.

considered. First, J was returned to Mr. T's custody following his release from state custody. J was still a minor at the time and yet was not allowed to live in the family home. This required Mr. T to provide another living space for him separate from his younger siblings. Second, J has a mental health diagnosis that requires Mr. T to obtain some sort of guardianship of him and to maintain J at the family residence. Also, there may be significant additional expenses for counseling for all of the children. Third, Mr. T has three younger children in the home who also rely on him for support. Fourth, Mr. T's wife is herself disabled and unable to contribute financially to the household. Finally, Mr. T is not able to work year-round due to the nature of his employment, so he has to try to get by on unemployment benefits during the months he is off work.

With J in the home, any child support Mr. T actually has to pay on this case would deprive not only J, but B, C and R of the support they need on a day-to-day basis. This essentially makes J and the other children bear the current burden of the child support charges all the way back to February 2011. Without his wife being able to help financially, it would be even harder for Mr. T to provide basics as food, housing and utilities.

The Alaska Supreme Court holds that factors such as these, which relate to the well-being of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term "good cause," however, is to "be determined by the context in which it is used."¹⁶ That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, commentary at sec. I(B).^{17]}

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. T proved by clear and convincing evidence that manifest injustice would result if his child support were not reduced. It makes little sense, and it would be unjust, to burden his household by adding more child support debt to his obligation to support J and the other children in the home currently. Mr. T's child support should be set at the statutory minimum of \$50 per month. This constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). Because this is a third-party custody case, the \$50 per month amount is

¹⁶ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

¹⁷ *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

divided by four children, with the result being \$12.50 per month per child. This is the same amount as set in the May 2011 child support decision in Mr. T's case, so essentially, Mr. T's child support continues as set in 2011, with the only variable being the number of children out of the home.

IV. Conclusion

Mr. T met his burden of proving by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD under Civil Rule 90.3. His child support amount should continue to be varied under Civil Rule 90.3(c) to \$50 per month, or, \$12.50 per month per child.

V. Child Support Order

- Mr. T is liable for arrears for J in the amount of \$12.50 per month for the period from February 2011 through November 2012;
- Mr. T is liable for modified ongoing child support in the amount of \$12.50 per month per child, effective December 2012 and ongoing;
- Mr. T's ongoing child support is suspended as of June 7, 2013, due to J returning to the home – in the event Mr. T becomes liable for support in the future, CSSD will only charge Mr. T for children who are not in the home;
- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order dated March 21, 2013, remain in full force and effect.

DATED this 3rd day of September, 2013.

Signed _____
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 20th day of September, 2013.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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