

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

In the Matter of:)	
)	
K B. F)	OAH No. 13-0625-CSS
)	CSSD No. 001174934
_____)	

DECISION

I. Introduction

K F requested a modification of his child support obligation of \$464.00 per month for his son U. The Child Support Services Division granted this request, and reduced it to \$316.00 per month. Mr. F appealed. While this request was being processed, the Division determined that Mr. F and U's mother had a second son, B, and that Mr. F should pay support for both U and B. The Division then determined that, based on Mr. F's current employment, his ongoing child support obligation for the two children after March 1, 2013, was \$764.00 per month. After a hearing held on June 6, 2013, Mr. F submitted supplemental information, and the Division recalculated his ongoing 2013 child support obligation at \$733.00 per month for U and B. The Division set his arrears for B for January and February of 2013 at \$190.00 per month. These calculations correctly apply the rules governing child support obligations. Mr. F's ongoing child support obligation for his two sons, B and U, is \$733.00 per month from March 1, 2013, forward, and his arrears for January and February 2013 are \$190.00 per month.

II. Facts

K F is the father of three children.¹ Two of them, U and B, live with their mother, H L.² The third child, who is younger than both U and B, is not related to Ms. L. The support order at issue here does not involve the third child. None of the children lives with Mr. F.³

On May 6, 2011, the Division issued an Administrative Child Support and Medical Support Order, setting child support for one child, U, at \$464 per month.⁴ At that time, Mr. F was incarcerated, and he was not released until July 2012. On November 16, 2012, Mr. F filed a

¹ F testimony.
² Division Exhibit 10.
³ F testimony.
⁴ Division Exhibit 1.

Request for Modification of a Child Support Order.⁵ The Division served Notices of Petition for Modification on December 4, 2012⁶, and issued a Modified Administrative Child Support and Medical Support Order on January 17, 2013, which set support for U at \$316 per month.⁷ Mr. F appealed this order, arguing that the Division had erred in the calculation of his earnings for the prior year, and that he had too many expenses to pay that much support.⁸

On December 15, 2012, while the issue of the support order for U was pending, the Division issued a Notice of Paternity and Financial Responsibility to Mr. F for his other son, B.⁹ Mr. F did not contest paternity, and acknowledged that B was his son.¹⁰

The Division then continued to process Mr. F's case, adding B to his existing order for U, and recalculating Mr. F's earnings.¹¹ By this time, Mr. F had obtained steady employment with the No Name.¹² The Division initially calculated Mr. F's ongoing obligation for two children at \$812.00 per month, effective March 1, 2013.¹³ Mr. F requested an administrative review of this order.¹⁴ On review, the Division determined that the \$812.00 amount was in error because it was based on a forty-hour work week, and Mr. F worked only 37.5 hours per week.¹⁵ On that basis, on April 1, 2013, the Division amended its modification order to \$764.00 per month for two children effective March 1, 2013.¹⁶

Because the Division was adding a child to Mr. F's support obligation, the Division also had to calculate any back child support owed for B, beginning when B first began receiving public assistance, September 2012. When calculating the arrears for an additional child, the Division calculates the actual obligation for two children using actual income.¹⁷ For the time period September 2012 to December 2012, the Division used Mr. F's 2012 income to calculate the amount owed for a second child, and determined that his obligation was \$316.00 per month

⁵ Division Exhibit 2.

⁶ Division Exhibit 3.

⁷ Division Exhibit 5.

⁸ Division Exhibit 6 (Request for Appeal dated January 29, 2013).

⁹ Division Exhibit 4.

¹⁰ Division Exhibit 6.

¹¹ Division Exhibit 8, 9.

¹² F testimony.

¹³ Division Exhibit 10. The Modification Order begins on January 1, 2013, because a child support modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested, and the Petition here was filed in December 2012. 15 AAC 125.321(d).

¹⁴ Division Exhibit 11.

¹⁵ Division Exhibit 13.

¹⁶ Division Exhibit 13.

¹⁷ 15 AAC 125.340; *Spott v. Spott*, 17 P.3d 52, 55 (Alaska 2001).

for two children.¹⁸ At first, the Division calculated an arrearage for this time period.¹⁹ Later, the Division apparently recognized that Mr. F was actually paying \$464.00 per month for those four months, which was more than \$316.00, so no additional support was owed. The most recent calculations made by the Division show no arrearages for September to December 2012.²⁰

For the months of January and February 2013, the arrearage created by adding a second child was calculated based on Mr. F's expected 2013 income. The most recent calculation, discussed below, determined that Mr. F's ongoing support obligation from January 1, 2013 forward for two children was \$733.00 per month. Because his obligation for one child during this time would have been \$543.00 per month, the Division calculated that the additional amounts owed for B for January and February would be \$190 per month.²¹ No additional arrearage amount was calculated after March 1 because that is when the new order became effective.

A telephonic hearing was held on June 6, 2013, attended by K F, representing himself, and Andrew Rawls, representing the Division. The custodial parent did not appear. Although Mr. F's original appeal had been filed in response to the January 17, 2013, order, the parties accepted that the matter on appeal was the most recent order, which had set Mr. F's ongoing child support obligation for two children at \$764 per month.

At the hearing, Mr. F agreed that he should pay child support for his two sons, but he argued that the order set the support too high.²² He acknowledged that the Division had correctly identified his wages at \$20.42 per hour for 37.5 hours per week, but he cited the high cost of living in rural Alaska, and the expenses that he has to pay for his third child, whom he called "the baby."²³ He discussed his expenses, and explained that he paid for diapers and other supplies for the baby.²⁴ He admitted that none of the children lived with him, and he explained that it would not be possible at this time because he was living with his mother and he could not afford his own place.²⁵

¹⁸ Division Exhibit 10 at 6. The Order Adding a Child relates back to September 2012 because that is when Anthony began receiving public assistance. *Id.* at 8. The Order does not extend further back in time than September 2012 because a retroactive modification is not permitted. Alaska R. Civ. Pro. 90.3(h)(2).

¹⁹ Division Exhibit 13 at 8.

²⁰ Division Exhibit 19.

²¹ *Id.*

²² F testimony.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

The Division questioned Mr. F about the categories of deductible expenses described in Civil Rule 90.3, and asked Mr. F to fill out the “Formal Hearing Expense Worksheet” and provide recent check stubs. Mr. F agreed, and the record was held open until June 20, 2013, for Mr. F to supplement the record, and for the Division to recalculate his support obligation.²⁶ The record closed on June 24, 2013.

Based on the supplemental information, the Division used Mr. F’s actual pay stubs, which showed his earnings through the first five months of 2013 to be \$16,238.69, to calculate a yearly income of \$38,972.86.²⁷ It deducted his social security, income tax, and unemployment insurance expenses, to yield an adjusted annual income of \$32,587.14.²⁸ The Division then calculated Mr. F’s ongoing support obligation for the two children, U and B, effective March 1, 2013, at \$733.00 per month, based on 27 percent of his adjusted income.²⁹ The Division determined that no arrears were owed for September through December 2012, and calculated the arrears for January and February 2013 at \$380.00.³⁰

III. Discussion

Mr. F’s primary argument on appeal is that his expenses are too high for him to pay the obligation set by the Division. He has submitted an expense worksheet showing his debts, his payment schedules, and his estimated ongoing expenses for care of his third child.³¹

Child support obligations are determined under Civil Rule 90.3. For a non-custodial parent of two children, like Mr. F, this obligation is set at 27 percent of his adjusted annual income.³² In calculating an obligor’s adjusted annual income, the rule strictly limits the amounts that can be deducted from gross income. For example, an obligor’s expenses for a younger child cannot be deducted.³³ Nor can credit card debt, rent, or other general expenses. And although Civil Rule 90.3(c) permits additional deductions when an obligor proves by clear and convincing evidence that manifest injustice would result without a variance from the rule, the commentary to

²⁶ Although the Division was late with its filing, it had good cause, and, by this order, the Division’s Motion to Accept Late Filing is granted. Division’s Motion to Accept Late Filing and Submission to Record (June 21, 2013).

²⁷ Division Exhibit 19.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Division Exhibit 17.

³² Alaska R. Civ. Pro. 90.3(a).

³³ *Id.*

the rule makes clear that the exception does not apply here.³⁴ Absent a showing of substantial harm, which Mr. F does not assert, the need to support subsequent children is not cause for modification of the obligation to support the older children.³⁵ And Mr. F's payments here are for typical expenses, such as his boat, his credit card debt, and the purchase of an engagement ring.³⁶ These expenses are not the extraordinary expenses for health or other dire need that is required by the rule for modification.³⁷ Therefore, the Division must follow the formula set in Civil Rule 90.3(a) when calculating Mr. F's adjusted income.

Under the rule, “[c]hild support is calculated as a certain percentage of the income which will be earned when the support is to be paid.”³⁸ Here, in its most recent calculation, the Division estimated Mr. F's current income based on his year-to-date earnings for the first five months of 2013.³⁹ It applied the formula in Civil Rule 90.3(a) to determine ongoing support for B and U effective March 1, 2013, and arrears for B for January and February 2013. For purposes of determining whether arrears were owed from September 2012 to December 2012 for B, the Division used Mr. F's actual yearly income for 2012.⁴⁰ Both of these calculations are reasonable methodologies for estimating Mr. F's annual income.⁴¹ Accordingly, the Division's most recent calculation of Mr. F's child support obligation is affirmed.

IV. Conclusion

Mr. F's modified child support obligation should be adjusted based on the new calculations that the Division submitted on June 21, 2013. This child support obligation was calculated using the primary custody formula in Civil Rule 90.3(a). Mr. F did not prove by clear and convincing evidence that applying Civil Rule 90.3(a) would result in manifest injustice.

V. Order

1. The Division's Amended Modified Administrative Child Support and Medical Support Order dated April 1, 2013, is affirmed with the following modifications:

³⁴ Commentary, Alaska R. Civ. Pro. 90.3 at VI.

³⁵ *Id.*

³⁶ Division Exhibit 17.

³⁷ *Id.*

³⁸ *Id.* at III.E.

³⁹ Division Exhibit 19.

⁴⁰ Division Exhibit 10.

⁴¹ *See, e.g., In the Matter of K.L.G.*, OAH No. 07-0389-CSS (Commissioner of Revenue 2007) (“the most reliable evidence of income Mr. G. will earn when paying future monthly child support are his current earning records”).

- Mr. F's modified ongoing child support obligation for B and U is \$733.00 per month, effective March 1, 2013; and
 - Mr. F owes arrears for B for January and February 2013 of \$190.00 per month, for a total of \$380.00.
2. The Modified Administrative Child Support and Medical Support Order dated January 17, 2013, setting the support for U at \$316.00, is in effect for January and February 2013 only.

DATED this 27th day of June, 2013.

By: Signed
Stephen C. Slotnick
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 22nd day of July, 2013.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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