

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

In the Matter of:	)	
	)	OAH No. 13-0827-CSS
L G. S	)	CSSD No. 001187046
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**DECISION AND ORDER**

**I. Introduction**

L G. S appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on May 20, 2013. The obligee child is K, 3 years of age. The other party is C M. J.

The formal hearing was held in four sessions from July 3, 2013 through October 30, 2013. Both parties appeared by telephone for all four sessions. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The record closed on November 28, 2013.<sup>1</sup>

Based upon the record and after careful consideration, Mr. S is liable for support effective September 2010, based on Ms. J’s application for services. The child support amounts are \$737 per month from September 2010 through December 2011; \$862 per month for 2012; and \$621 per month for January 2013 through June 2013. A Utah court has assumed jurisdiction over the child support issue and ordered Mr. S to pay child support for K as of July 1, 2013.

**II. Facts**

Mr. S and Ms. J are the parents of K, who was born in July 2010. K has lived full-time with his mother since birth. When Ms. J learned she was pregnant, Mr. S and A J, Ms. J’s mother, attended the baby’s first ultrasound session with Ms. J on November 24, 2009.<sup>2</sup> After K was born, Ms. J and Mr. S communicated online about the baby on September 11, 2010. Mr. S inquired about K, and asked Ms. J when he would be getting papers “for a dna test.”<sup>3</sup> Subsequently, however, Mr. S did not maintain contact with Ms. J, even to the point of not responding to requests for his and his family’s health information that may have been important

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<sup>1</sup> CSSD filed a pleading that states record closure occurred on October 30, 2013, but that date is in error.  
<sup>2</sup> Letter from A J, Ms. J’s mother, dated November 6, 2013, and received November 12, 2013.  
<sup>3</sup> Exh. 1 at pg. 17.

to K's medical care. K has had intestinal surgery and open heart surgery. Ms. J applied for child support services in her state of residence on September 11, 2010.<sup>4</sup>

Mr. S was formerly in the military and separated from service in September 2012. He was stationed at No Name, Alaska at the time, having attained the rank of E-4 with 7 years of service.<sup>5</sup> CSSD estimated his total gross income, including the value of all of his military benefits, at \$48,101.04 for 2010; \$52,089 for 2011; and \$59,192.34 for 2012.<sup>6</sup> These figures yield child support calculations of \$737 per month for 2010; \$803 per month for 2011; and \$862 per month for 2012.<sup>7</sup> Mr. S does not contest CSSD's income determinations or the child support calculations for these years.

Mr. S established his Alaska residency in April 2012, when he obtained his Alaska driver's license, and he became eligible for the Permanent Fund dividend as of calendar year 2014. Mr. S is currently employed by No Name Distribution (No Name), where he earns \$18 per hour. During the first half of 2013, he earned wages of \$23,173.58 from No Name,<sup>8</sup> which CSSD doubled in order to estimate his total gross income for 2013 at \$46,347.16.<sup>9</sup> As with the earlier years, Mr. S does not dispute this income figure, and, in fact, the parties agreed to a child support amount of \$621 per month for the period from January 2013 through June 2013.<sup>10</sup>

Mr. S and his wife, N, were married in 2011. They have two children in the home – U, 6 years of age, her son from a prior relationship, and B K, 1 year old, their biological child. N is not currently employed, although she did child care at No Name while Mr. S was stationed there. She occasionally provides babysitting in the home, but there is no evidence as to how much money she brings in from that activity.

Mr. S reported his regular family expenses are roughly \$3550 – \$3720 per month, much of which appears fairly normal for Alaska.<sup>11</sup> Of note, however, the Ss purchased a \$28,000 vehicle in 2013, just three months after Mr. S was served with the initial administrative child support order for K.<sup>12</sup> This purchase added a vehicle payment of \$500 to their monthly

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<sup>4</sup> Exh. 1; Exh. 14 at pg. 2.

<sup>5</sup> Mr. S's hearing testimony on July 3, 2013.

<sup>6</sup> Exh. 22 at pgs. 1-3.

<sup>7</sup> *Id.* The calculations for these years were corrected during the hearing process and are now correct.

<sup>8</sup> Exh. 17.

<sup>9</sup> Exh. 18.

<sup>10</sup> Status conference held on October 30, 2013. *See also* Exh. 22 at pg. 4.

<sup>11</sup> Exh. 12.

<sup>12</sup> *See* Exh. 6 at pg. 16; Exh. 12.

expenses. Also, Mr. S was in a motor vehicle accident in Texas in 2001 and has to pay \$100 per month for the driver's license reinstatement fee. The balance is nearly \$16,000.<sup>13</sup>

Ms. J's regular household expenses are roughly \$1984 per month.<sup>14</sup> They are relatively low because she does not own a car. Rather, she pays \$75 per month for a bus pass. The obligee, K, has significant health issues, and has had multiple surgeries, including heart and intestinal surgery, on top of numerous ear infections. Ms. J has, at times, been unable to obtain health information for K's health providers from Mr. S because the obligor has not responded to or cooperated with Ms. J's requests. In addition to K, Ms. J has a second son, A, who recently turned one year old.<sup>15</sup>

In 2013, Mr. S filed custody litigation in Utah, and the court issued visitation orders allowing Mr. S to begin to establish a relationship with K. The Utah court also assumed jurisdiction of the child support issue, effective July 1, 2013.<sup>16</sup> Thus, this order will establish Mr. S's child support only through June 2013.

### **III. Discussion**

#### *A. Mr. S Must Pay Child Support for K from September 2010 forward*

The first issue to be addressed concerns the effective date of Mr. S's support obligation for K. CSSD's regulation 15 AAC 125.105(a)(2) states that when a child support obligation is "initiated by the custodial parent, the agency will establish arrears beginning as of the date the custodial parent most recently applied for the agency's services . . . ."<sup>17</sup>

Ms. J requested child support services in her state of residence on September 11, 2010.<sup>18</sup> Her child support agency submitted a request for services to CSSD on October 5, 2012.<sup>19</sup> However, the transmittal did not mention any arrears; it requested only that CSSD establish Mr. S's paternity of K and a *current* child support obligation.<sup>20</sup> Thus, based on the request, CSSD established Mr. S's child support obligation effective October 2012.<sup>21</sup> At the formal hearing, Ms. J testified that she applied for services in her home state much earlier than the transmittal's

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<sup>13</sup> Exh. 12.

<sup>14</sup> Exh. 13 at pg. 2.

<sup>15</sup> *Id.*

<sup>16</sup> Utah Order on Petitioner's Motion for Temporary Orders received October 21, 2013, at pg. 4 of 7.

<sup>17</sup> 15 AAC 125.105(a)(2).

<sup>18</sup> Exh. 1; Exh. 14 at pg. 2.

<sup>19</sup> Exh. 1.

<sup>20</sup> Exh. 1 at pg. 1.

<sup>21</sup> *See* Amended Administrative Child and Medical Support Order dated March 5, 2013, Exh. 6 at pgs. 2, 10.

request for child support to begin as of October 2012. Ms. J subsequently provided a copy of her original application for child support services submitted to her state and dated on September 11, 2010.<sup>22</sup>

When Ms. J applied for services for K, she was initiating the establishment of Mr. S's administrative child support obligation for the child. The straightforward language of CSSD's regulation clearly requires that under these circumstances, arrears for K began to accrue at the time of Ms. J's application. As a result, Mr. S is liable for supporting K in this administrative action beginning in September 2010.

*C. Child Support Calculations*

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. CSSD correctly determined Mr. S's income amounts from the Alaska Department of Labor and Workforce Development and the documents Mr. S provided. Based on Mr. S's initial Texas residency, CSSD left the PFD out of Mr. S's child support calculations for 2010 through 2012.<sup>23</sup> Mr. S obtained his Alaska driver's license in June 2012. A new Alaska resident must spend a full calendar year in the state, known as the "qualifying year," before becoming eligible for the PFD, so Mr. S would not have been eligible for a 2012 or 2013 PFD. The first year he would have been eligible for a PFD is 2014.<sup>24</sup>

The mandatory deductions for federal taxes, Social Security and Medicare are calculated by CSSD's online child support calculator,<sup>25</sup> which assigns the highest, single person tax rate to the parent's gross income figure. Additional deductions include retirement contributions, if the individual is actually making the payments.<sup>26</sup>

Utilizing the income information available, CSSD correctly calculated Mr. S's child support at \$737 per month for 2010; \$803 per month for 2011; and \$862 per month for 2012.<sup>27</sup> Mr. S does not contest CSSD's income determinations or the child support calculations for these years. CSSD also calculated the 2013 child support amount at \$621 per month, which all the parties accepted for the period from January 2013 through June 2013.

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<sup>22</sup> Exh. 14 at pg. 2.

<sup>23</sup> See Exh. 22 at pgs. 1-3.

<sup>24</sup> See AS 43.23.005(a)(3).

<sup>25</sup> <http://www.childsupport.alaska.gov/>.

<sup>26</sup> Civil Rule 90.3(a)(1)(B).

<sup>27</sup> *Id.* The calculations for these years were corrected during the hearing process and are now correct.

*D. Financial Hardship*

The final issue in this case concerns whether Mr. S's child support obligation should be reduced because it causes him a financial hardship.

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."<sup>28</sup> The existence of "unusual circumstances" may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.<sup>29</sup> It is appropriate to consider all relevant evidence in order to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).<sup>30</sup>

Based on the evidence in its entirety, Mr. S has not proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced. Mr. S is married, and his wife has been employed in the past. Apparently she is not working now, for unknown reasons, and is doing at least some child care in the home, which could potentially be increased. They have what appear to be typical household expenses, other than their consumer debt and recent purchases. A significant payment – \$500 per month – comes in the form of a vehicle valued at over \$27,000 that Mr. S purchased three months *after* he was served with notice of this obligation. Mr. S's consumer debt should not take precedence over his obligation to support his children.<sup>31</sup>

Finally, one of the reasons Mr. S is requesting a variance in the child support amount is that he did not know he had a child with Ms. J and was not able to obtain paternity testing until 2013. Mr. S's testimony is not credible. The custodian testified consistently that Mr. S knew about the parties' child. Ms. J asserted, and her mother confirmed in a letter, that Mr. S was at K's first ultrasound with them. Ms. J also testified that she tried on multiple occasions to contact Mr. S and obtain health information from him so K's doctors would have it for the child's

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<sup>28</sup> Civil Rule 90.3(c).

<sup>29</sup> Civil Rule 90.3(c)(1).

<sup>30</sup> Civil Rule 90.3, Commentary VI.B.

<sup>31</sup> *See* *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

surgeries, but that Mr. S would not respond to her entreaties, or, if she did reach him, that he claimed he did not know her. The testimony of Ms. J, which was confirmed by her mother, is more credible than Mr. S's testimony, and it forms the basis of the findings on this issue.

Thus, although the establishment of this child support order has undoubtedly created financial stress for Mr. S, based on the totality of circumstances, Mr. S has not shown good cause for an adjustment of his support obligation under Civil Rule 90.3(c).

#### **IV. Conclusion**

Mr. S met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order was incorrect because initially he received a deduction for supporting a prior child in the home who is not actually his biological child. Based on the date of Ms. J's application for services for K, Mr. S is liable for supporting K in this administrative child support action as of September 2010. Thus, he is liable for support effective September 2010. The child support amounts are \$737 per month from September 2010 through December 2011; \$862 per month for 2012; and \$621 per month for January 2013 through June 2013. A Utah court has assumed jurisdiction over the child support issue and ordered Mr. S to pay child support for K as of July 1, 2013.

Finally, Mr. S has not established good cause for a variance based on Civil Rule 90.3(c). The child support calculations set forth in this decision are correct and should be adopted.

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

1. Mr. S is liable for support for K effective September 2010, based on Ms. J's application for services. The child support amounts are \$737 per month from September 2010 through December 2011; \$862 per month for 2012; and \$621 per month for January 2013 through June 2013.
2. A Utah court has assumed jurisdiction over the child support issue and ordered Mr. S to pay child support for K as of July 1, 2013.
3. All other provisions of the Amended Administrative Child Support and Medical Support Order dated November 8, 2011, remain in full force and effect.

DATED this 17<sup>th</sup> day of March, 2014.

*Signed*  
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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 22<sup>nd</sup> day of April, 2014.

By: Signed  
Signature  
Angela M. Rodell  
Name  
Commissioner  
Title

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