

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

IN THE MATTER OF:)

X R. X)

) OAH No. 13-0870-CSS

) CSSD No. 001181406

DECISION AND ORDER

I. Introduction

This case involves the obligor, X R. X's, appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on May 21, 2013. The children in this case are B and M, twins age 1. The custodian is M K. J. Hearings were held in July and August 2013. Mr. X and Ms. J participated by telephone. CSSD's participant, Child Support Specialist Russell Crisp, also appeared telephonically.

Mr. X has met his burden of proof and shown by a preponderance of the evidence that the May 21, 2013 order should be modified using his actual income for 2013 and, to the extent he pays support to his child from a prior relationship, a deduction. Therefore, X R. X is liable for child support for two children in the amount of \$535 per month for the period from April 2012 through December 2012. Child support for two children is set at \$50 per month, effective January 2013 and ongoing, based on the "good cause" provisions of Civil Rule 90.3.

II. Facts

CSSD's original involvement was brought about because B and M began receiving public assistance benefits in January 2012. In February 2012, Ms. J withdrew from CSSD services because the family was intact. In March 2012, Ms. J notified public assistance that she was moving and the family was no longer intact. CSSD reopened the case and issued an Administrative Child Support and Medical Support Order dated August 2, 2012, that established Mr. X's child support obligation.¹ Mr. X was served with the order on February 11, 2013 at the No Name Correctional Center. He requested an administrative review which was scheduled for May 21, 2013. Mr. X did not participate in his review and that same day, May 21, 2013, CSSD issued an Amended Administrative Child Support and Medical Support Order.²

¹ Exhibit 2.

² Exhibit 7.

This order set Mr. X's total arrears at \$7,490 for the period from April 1, 2012 through May 31, 2013.³ His monthly child support obligation was set at \$535 for two children effective June 1, 2013 and ongoing. Support was calculated using a primary custody calculation.⁴ Mr. X appealed asserting that he was in the home from April 2012 through December 14, 2012 and he was supporting his children.⁵

A formal hearing was held as requested by Mr. X. As the hearing progressed the reasons for Mr. X's challenge to the May 21, 2013 were refined into two arguments. The first is that even if he was not physically under the same roof as his children, he was supporting them and should not have to pay support again. The second reason is that his 2013 income is not based upon actual earnings. It was also discovered that Mr. X has an older child from a prior relationship.

III. Discussion

The person who filed the appeal, in this case, Mr. X, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.⁶ A parent is obligated both by statute and at common law to support his or her children.⁷ This obligation begins when the child is born.⁸ However, by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care services were initiated on behalf of the child(ren), for no more than six years prior to service on the obligor of notice of his or her support obligation.⁹

When calculating ongoing child support, determining an obligor's annual income for purposes of child support is "necessarily... speculative because the relevant income figure is expected future income."¹⁰ However, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. When calculating arrears, the regulations define income as the actual annual income that the parent earned or received each

³ Exhibit 7.

⁴ Exhibit 7.

⁵ Exhibit 8.

⁶ 15 AAC 05.030(h).

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

⁹ 15 AAC 125.105(a)(1)-(2).

¹⁰ See Civil Rule 90.3, Commentary III.E.

calendar year for which arrears are sought to be established.¹¹ Here arrears are sought to be established for 2012 and 2013.

A. April 2012 through December 2012

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support obligation is to be calculated from his or her "total income from all sources." The obligor has the burden of proving his or her earning capacity.¹² It is undisputed that in 2012 Mr. X's reported earnings and his Permanent Fund Dividend totaled \$27,846. Using this amount, CSSD calculated his monthly child support obligation for two children to be \$535 effective April 1, 2012.¹³

Mr. X is no longer contending that the family was intact and living under one roof from April 2012 to December 2012, but he is challenging the idea that he should not receive a credit against his child support obligation for payments made directly to Ms. J.

The regulation governing credits for direct payments is precise. It requires that the payment be made to the custodial parent and that both parents intended the payment to be a direct payment of child support.¹⁴ When the custodial parent does not agree to a credit for direct payment, the obligor must bring forth evidence of direct payments, including cancelled checks and money orders, statements indicating deposits or electronic funds transfers, receipts signed by the custodial parent, etc. When viewed in total, the evidence must be clear and convincing that the payment was made to the custodial parent and that both parents intended the payment to be child support.¹⁵ Mr. X did not provide convincing evidence, other than his own self-serving testimony, of direct payments. Therefore, he is not entitled to a direct credit for child support from April 2012 through December 2012.

B. January 2013 and ongoing.

Mr. X was incarcerated from mid-December 2012 through mid-March 2013. Upon his release he has found it difficult to find work and his only source of income is needs based public assistance and unemployment insurance. As of June 8, 2013, his actual income for the year totaled \$2,730. This results in an expected adjusted annual income in the amount of \$5,414.

¹¹ 15 AAC 125.020; 15 AAC 125.030(d); 15 AAC 125.105.

¹² *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹³ Exhibit 7 at 9.

¹⁴ 15 AAC 125.465(a).

¹⁵ 15 AAC 125.465(a).

Using this figure, Mr. X's monthly child support for two children is \$122¹⁶ effective January 2013 and ongoing. .

C. Hardship

Mr. X testified that he cannot afford to pay child support and requested a variance pursuant to Civil Rule 90.3(c). 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."¹⁷ The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[18]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).¹⁹

Based on the evidence presented, this case does present unusual circumstances of the type contemplated by Civil Rule 90.3. At this time Mr. X's income is extremely low. His monthly income is just over \$450. A portion of that is taken to fulfill his support obligations to his older child from a prior relationship. This leaves Mr. X with less than \$400 a month. Unless varied, Mr. X's income after child support would be approximately \$280. He has done his best to minimize living expenses. However, job hunting does require transportation and other small necessities, such as laundry and personal hygiene items. Unless varied, it is unlikely that Mr. X will have the resources necessary to obtain work and pay the support calculated under Civil Rule 90.3. He has met his burden of proving by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3(a) for 2013 were not

¹⁶ See Calculation at Attachment A.

¹⁷ Civil Rule 90.3(c).

¹⁸ Civil Rule 90.3(c)(1).

¹⁹ Civil Rule 90.3, Commentary VI.E.1.

varied. From January 2013 and ongoing, Mr. X's support obligation for the two children should be \$50 per month, the minimum amount by law.²⁰

IV. Conclusion

Mr. X met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order overstated his income for purposes of child support for January 2013 and ongoing. He also established by clear and convincing evidence that unless his 2013 child support is varied, the result would be manifestly unjust.

V. Child Support Order

Therefore, CSSD's Amended Administrative Child Support and Medical Support Order issued on May 21, 2013 is modified as follows:

- X R. X is liable for child support for two children in the amount of \$535 per month for the period from April 2012 through December 2012; and \$50 per month effective January 2013 and ongoing.
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated May 21, 2013 remain in effect

DATED this 12th day of September, 2013.

Signed

Rebecca L. Pauli

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 14th day of October, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Commissioner
Title

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