

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

In the Matter of:	)	
	)	OAH No. 13-1080-CSS
U S	)	CSSD No. 001098224
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, U S, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 6, 2013. The obligee child is B, 15. The other party is K A. R.

The hearing was completed on October 9, 2013. Both parties appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. S's child support for B is modified to \$1,000 per month, effective April 2013 through June 2013; and further modified to \$942 per month, effective July 2013, and ongoing. Mr. S's request for a reduction in the child support amount under Civil Rule 90.3(c) based on a financial hardship is denied.

**II. Facts**

*A. Procedural Background*

Mr. S's child support obligation for B was set at \$308 per month in September 2000.<sup>1</sup> On January 10, 2013, Ms. R initiated a modification review.<sup>2</sup> On March 22, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> CSSD requested Mr. S's financial information, but he was deployed until June 23, 2013.<sup>4</sup> On June 6, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S's ongoing child support to \$981 per month, effective April 1, 2013.<sup>5</sup> On June 28, 2013, Mr. S submitted a request for an administrative review.<sup>6</sup> CSSD did not refer the obligor's request to the OAH as an appeal, but instead contacted Mr. S on August 8, 2013 and CSSD obtained additional pay information from him. CSSD recalculated his modified ongoing

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

child support at \$998 per month.<sup>7</sup> CSSD referred Mr. S's request for an administrative review to the OAH as an appeal and request for a formal hearing on August 8, 2013.

*B. Material Facts*

Mr. S and Ms. R are the parents of B, who is currently 15 years old. B lives full-time with Ms. R.

Mr. S is an E-6 in the military with approximately 11 years of service.<sup>8</sup> Based on his most recent LES from September 2013,<sup>9</sup> CSSD estimated Mr. S's 2013 income at wages of \$39,582; military non-taxable benefits of \$23,163.24;<sup>10</sup> and the PFD of \$900; for total gross income of \$63,645.24.<sup>11</sup> His monthly deductions for taxes and Social Security equal \$596.18, with the result that his adjusted annual (net) income for 2013 is \$56,491.08.<sup>12</sup> When this income figure is inserted into CSSD's online child support calculator, it yields a correct ongoing support amount of \$942 per month from July 2013 forward.<sup>13</sup>

Mr. S is married. He and his wife, Z, have four children in the home who are all younger than B. They range in age from 14 down to 10 years of age.<sup>14</sup> Z is usually employed in the human resources field and earns about \$1,800 per month. Mr. S testified that she was furloughed before the final hearing, and the record does not indicate whether she had returned to work. More likely than not, Z resumed her employment when the government shutdown ended.

The Ss purchased a home for \$252,000 in August 2013. They used \$11,000 Mr. S said he saved during his deployment for the purpose of clearing his credit report, making the \$2,000 down payment and purchasing furniture. The obligor said they bought the house because their children were tired of moving around so much.

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<sup>6</sup> Exh. 6.

<sup>7</sup> Exh. 8.

<sup>8</sup> See Obligor's September 2013 Leave and Earnings Statement (LES), Exh. 10 at pg. 3.

<sup>9</sup> *Id.*

<sup>10</sup> Mr. U's military non-taxable benefits consist of Basic Allowance for Subsistence (BAS) and Basic Allowance for Housing (BAH). Exh. 10 at pg. 3.

<sup>11</sup> Exh. 13 at pg. 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* CSSD was asked to calculate Mr. U's child support obligation for the three months from April 2013, when the modification became effective, through June 2013, when he returned from his deployment, because federal income taxes were not deducted from his pay during that time. On an annual basis, his untaxed gross income would be \$63,090.27 and his adjusted annual (net) income would be \$60,005.55. Exh. 12 at pg. 1. Thus, his child support obligation calculated from this income scenario would be \$1,000 per month. *Id.* CSSD calculated this figure correctly pursuant to Civil Rule 90.3.

<sup>14</sup> Exh. 10 at pg. 1; *see also* Exh. 6 at pgs. 9-12.

Mr. S reported regular monthly expenses of \$4,215, which consists of a mortgage payment of \$1,593;<sup>15</sup> \$940 for food; \$485 for utilities; \$1,042 for vehicle expenses, including \$455 for the payment on a 2010 Chevy purchased in August 2010; \$778 for other monthly payments, including \$425 per month for credit card bills; and \$970 for expenses for the children for school supplies and clothing, sports and school lunches.<sup>16</sup>

Ms. R is also married. She and her husband have four children in the home; B is the oldest. Ms. R's monthly expenses are strikingly similar to Mr. S's, though somewhat lower. However, it appears she has much higher debt than he does, because she owes \$30,000 for medical expenses for her husband and \$54,000 on student loans.<sup>17</sup> They do not own a home – they are renting and pay \$1,400 per month plus utilities.<sup>18</sup>

### III. Discussion

Mr. S filed the appeal in this matter. He alleges the child support calculation is too high for just one child. He also claims that he cannot afford the child support amount, in other words, that it would create a financial hardship for him and his family.

As the party who filed the appeal, Mr. S has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated June 6, 2013 is incorrect.<sup>19</sup>

#### A. *Child support calculation*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>20</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. S's child support has been \$308 per month since September 2000. Thus, a child support calculation of \$354.20 or more would be sufficient to warrant modification in this case.<sup>21</sup> A modification is effective beginning the month

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<sup>15</sup> The mortgage is not included in the total expenses figure because it is paid by the military through his BAH.

<sup>16</sup> Exh. 10 at pg. 1.

<sup>17</sup> Exh. 11 at pg. 1.

<sup>18</sup> *Id.*

<sup>19</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>20</sup> AS 25.27.190(e).

<sup>21</sup>  $\$308 \times 115\% = \$354.20$ .

after the parties are served with notice that a modification has been requested, so this modification is effective as of April 1, 2013.<sup>22</sup>

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 such as taxes, retirement and Social Security contributions. Income for military personnel includes their "base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay."<sup>23</sup>

For the modification review, CSSD calculated Mr. S's child support at \$981 per month, based on military pay charts available online.<sup>24</sup> Following the hearing, CSSD calculated Mr. S's support based on his most recent LES's. Mr. S's child support still remains remarkably comparable to CSSD's modification order – for the three months of his deployment that occurred after the modification became effective, CSSD calculated his child support at \$1,000 per month.<sup>25</sup> This amount is somewhat higher than amount beginning in July 2013 because he was not paying taxes during his deployment and his deductions from income were lower. For the period beginning in July 2013, CSSD calculated Mr. S's child support at \$942 per month, largely based on his higher tax obligation.<sup>26</sup>

Because they are based on Mr. S's most recent pay documents that reflect his actual income and other military benefits, these calculations are correct under Civil Rule 90.3.

*B. Financial hardship*

The other issue in this appeal is whether Mr. S is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). It is from CSSD's most recent calculations that Mr. S's request for a variance based on financial hardship should be considered. He maintains that he cannot afford the monthly support amount, especially given that he has four children in the home and he and his wife just bought a house. In response, Ms. R claims that Mr. S should not have his modified child support reduced because he is making rather extravagant purchases for his current family rather than taking care of his oldest child.

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<sup>22</sup> 15 AAC 125.321(d). In this case, the notice was issued on March 22, 2013. Exh. 3.

<sup>23</sup> Civil Rule 90.3, Commentary III.A.28. *See also* 15 AAC 125.030(a) (19), (27).

<sup>24</sup> Exh. 5 at pg. 8.

<sup>25</sup> Exh. 12.

<sup>26</sup> Exh. 13.

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>27</sup> 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).<sup>28</sup>

Based on the totality of circumstances, Mr. S's situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated pursuant to the Rule should be lowered. B is entitled to receive child support in an amount based on the obligor's income and calculated under Alaska law. Mr. S's modified child support has been calculated based on his annual income and the two calculations generated in this case are correct.

It is understandable that Mr. S and his wife wanted to purchase a home. But his duty to support B takes priority over other debts and obligations, including having younger-born children in the home.<sup>29</sup> Mr. S knew about the petition for modification and that his support for B likely would go up – after all, it had remained unchanged since being established in the year 2000. Yet Mr. S and his wife took on considerable debt and additional expenses with the purchase of a home in August 2013, several months after Ms. R requested modification of the child support obligation. Mr. S used all of the \$11,000 in savings that accrued from his deployment in order to clear his credit report, make the down payment on the house and also purchase furniture.

Therefore, based on the evidence in its entirety, Mr. S did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for B were not reduced. Mr. S's child support should be modified based on CSSD's calculations, without variation.

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<sup>27</sup> Civil Rule 90.3(c).

<sup>28</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>29</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

#### **IV. Conclusion**

After a slight adjustment in his income based on Mr. S's most recent Leave and Earnings Statements, his modified child support is now correctly calculated at \$1,000 per month for Z 2013 through June 2013, and \$942 per month, beginning in July 2013. Mr. S thus met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h).

Mr. S is not entitled to a variance based on Civil Rule 90.3(c) due to a financial hardship. He did not prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." The child support calculations should thus be adopted, without variance.

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

- Mr. S's child support for B is modified to \$1,000 per month, effective from April 2013 through June 2013; and further modified to \$942 per month, effective July 2013 and ongoing;
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated June 6, 2013 remain in full force and effect.

DATED this 28<sup>th</sup> day of October, 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 18<sup>th</sup> day of November, 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.]