

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

In the Matter of:)
)
 U L. N, JR.) OAH No. 14-0080-CSS
) CSSD No. 001161343
_____)

DECISION AND ORDER

I. Introduction

This case involves U N, Jr.'s appeal of a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 25, 2013. CSSD's modification order decreased the child support payable by the obligor parent, Mr. N, from \$421 per month to \$50 per month effective September 1, 2013.¹

This decision concludes, based on the evidence in the record, that \$50.00 per month is the correct amount of child support payable by Mr. N. Although Mr. N is currently incarcerated and unable to work, Civil Rule 90.3 does not allow his child support obligation to be reduced below \$50.00 per month. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated November 25, 2013 is affirmed. Mr. N's child support obligation for three children, based on M M B's physical custody of the children, is set at \$50 per month effective September 1, 2013 and ongoing.

II. Facts

A. Material Facts

Mr. N and his former wife, Ms. B, are the parents of H N N (age 8), U M N, III (age 6), and Z B K N (age 4).² Ms. B currently has physical custody of the three children.³

Mr. N worked at the No Name from the fourth quarter of 2009 until the first quarter of 2011.⁴ Mr. N next worked at No Name Associates, Inc. during the third quarter of 2011. The records of the State of Alaska Department of Labor and Workforce Development (DOL) indicate that Mr. N has not received wages since 2011.⁵ DOL's records indicate that Mr. N earned gross income from employment of \$943.01 in 2009, \$22,009.08 in 2010, and \$5,971.63 in 2011; he had

¹ Ex. 1 p. 1; Ex. 5 p. 1.

² Ex. 8 pp. 2, 7; undisputed hearing testimony.

³ Undisputed hearing testimony.

⁴ Ex. 7 p. 1.

⁵ Ex. 7 p. 1.

no reported earnings from employment in 2012 or 2013.⁶ During 2011 Mr. N also received unemployment insurance benefits (UIB) totaling \$5,236.00.⁷

Mr. N was incarcerated for two days in November 2011, three days in March 2012, 25 days in October 2012, and two days in December 2012.⁸ Mr. N was incarcerated again on April 9, 2013 and remained in custody from that date through the date of the hearing.⁹ Mr. N testified at hearing that he expects to remain incarcerated until May 2014 or later, and that he is unable to earn money to pay child support until such time as he is released.

Ms. B testified at hearing that she does not object to reducing Mr. N's child support obligation to \$50.00 per month while he is incarcerated, since he is not earning any income.

B. Relevant Procedural History

Mr. N's former wife applied for services from CSSD sometime in 2010.¹⁰ On April 17, 2010 CSSD issued an Administrative Child Support and Medical Support Order which required Mr. N to pay child support in the amount of \$421 per month beginning May 1, 2010.¹¹

At some time during 2011 Mr. N's wife filed for divorce.¹² On August 19, 2011 the Anchorage Superior Court issued a Final Parenting Agreement, Findings of Fact and Conclusions of Law, and a Judgment and Decree of Divorce.¹³ The Superior Court awarded joint legal custody and shared physical custody of the three children to the parties.¹⁴ Pursuant to the court documents, no child support was due as long as both parties were living in the same home,¹⁵ but when Mr. N moved out of the house, child support would "be set according to Civil Rule 90.3, unless CSSD has opened an Administrative Case."¹⁶

⁶ Ex. 7 p. 1. Mr. N confirmed at hearing that he has not been employed since 2011.

⁷ Ex. 7 p. 1.

⁸ U N's hearing testimony.

⁹ U N's hearing testimony.

¹⁰ Ex. 1

¹¹ Ex. 1 pp. 1 - 2.

¹² Ex. 8.

¹³ Ex. 8.

¹⁴ Ex. 8 pp. 2, 8.

¹⁵ Ex. 8 pp. 1, 3.

¹⁶ Ex. 8 p. 3. Paragraph 8 of the Court's Findings of Fact and Paragraph 4 of the Court's Conclusions of Law state that the parties "shall exchange financial information upon separation," and that, "[a]t that time, the parties can file to modify support in the court or can pursue support establishment through CSSD" (Ex. 8 p. 8). Because the parties are now separated, it is clear, based on the foregoing provisions, that the Office of Administrative Hearings now has jurisdiction to address child support issues in this case.

Ms. B and the parties' three children left Alaska in October 2012; Mr. N remained in Alaska.¹⁷ On August 6, 2013 Mr. N requested modification of his child support obligation through CSSD.¹⁸ On November 25, 2013 CSSD issued a Modified Administrative Child Support and Medical Support Order.¹⁹ This modification order lowered Mr. N's child support obligation to \$50 per month effective September 1, 2013.²⁰ CSSD's modification order was based on Mr. N receiving adjusted annual income of \$900 in 2013.²¹

Mr. N appealed CSSD's modification order of November 25, 2013 on January 13, 2014.²² Mr. N stated at hearing that he appealed because he is currently incarcerated and unable to work.

Mr. N's hearing was held on February 4, 2014. Mr. N participated by phone, represented himself, and testified on his own behalf. Ms. B also participated by phone, represented herself, and testified on her own behalf. Erinn Brian participated by telephone and represented CSSD. The record was held open for post-hearing filings through February 18, 2014, at which time the record closed.

III. Discussion

A. Mr. N Bears the Burden of Proof in This Proceeding

Mr. N appeals CSSD's Modified Administrative Child Support and Medical Support Order dated November 25, 2013 on the basis that CSSD's ongoing child support award of \$50 per month is excessive. As the person who filed the appeal in this case, Mr. N has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.²³

B. The Legal Basis for, and Calculation of, Mr. N's Child Support Obligation

A parent is obligated both by statute and at common law to support his or her children.²⁴ A parent's duty of support begins on the child's date of birth.²⁵ In those cases in which the child

¹⁷ Undisputed hearing testimony.

¹⁸ Ex. 2. Mr. N emphasized at hearing that he was seeking to reduce his monthly child support obligation only temporarily because he is currently incarcerated and therefore unable to work.

¹⁹ Ex. 5.

²⁰ Ex. 5 p. 1. CSSD's representative stated at hearing that Mr. N's child support obligation was lowered because he was incarcerated and temporarily unable to work to earn money to pay child support.

²¹ Ex. 5 p. 6.

²² Ex. 6 p. 1.

²³ 15 AAC 05.030(h).

²⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

²⁵ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.²⁶

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. How support is calculated depends upon the type of custody exercised by the parents of the children.²⁷ Under Civil Rule 90.3(a)(1), where the custodial parent has primary physical custody of the child, the first step in calculating child support is to determine the non-custodial parent's total income from all sources. The record indicates that Mr. N's current annual income consists solely of the Alaska Permanent Fund Dividend (PFD).

The second step is to subtract any applicable deductions from the non-custodial parent's gross income; the resulting number is referred to as adjusted income. In this case, Mr. N did not dispute CSSD's finding that Mr. N received adjusted annual income of \$900 in 2013.

The third step is to multiply the non-custodial parent's adjusted income by the percentage specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.²⁸ In order to calculate a child support award for three children, the non-custodial parent's adjusted income must be multiplied by 33%.²⁹ In this case, multiplying Mr. N's income by 0.33 results in an annual child support obligation of \$297.

Normally an annual child support obligation is divided by twelve to obtain the monthly child support payment. Mathematically, dividing \$297 by twelve would result in a monthly payment of \$24.75. However, under Alaska law, the minimum monthly child support payment that may be ordered is \$50 per month.³⁰ Accordingly, CSSD was correct to set Mr. N's monthly support obligation at \$50.

C. Mr. N Satisfies the Criteria for Modification

Under Civil Rule 90.3, a child support award may be modified upon a showing of a material change of circumstances.³¹ A material change of circumstances will be presumed if the monthly child support payment, as calculated under Civil Rule 90.3, is more than 15 percent greater or less

²⁶ 15 AAC 125.105(a)(1)-(2).

²⁷ Civil Rule 90.3(a), (b) (recognizing four types of custody [primary, shared, divided, and hybrid] and identifying a calculation for each type). *See also* Civil Rule 90.3(f) (defining types of custody).

²⁸ Civil Rule 90.3(a)(2).

²⁹ Civil Rule 90.3(a)(2)(C).

³⁰ Civil Rule 90.3(c)(3). There are a few minor exceptions to this rule, but none of them apply in this case.

³¹ Civil Rule 90.3(h)(1).

than under the previous child support order.³² Modifications are generally effective on the first day of the month following the date on which a motion for modification, or a notice of petition for modification, is served on the opposing party.³³

Mr. N's current child support obligation of \$50.00 is more than 15% less than the \$421 per month due under CSSD's previous child support order. Accordingly, CSSD correctly determined that Mr. N is entitled to modification of his child support obligation. Because Mr. N's modification request was received by CSSD on August 6, 2013, the modification is effective as of September 1, 2013.

IV. Conclusion

CSSD correctly determined that Mr. N is entitled to modification of his child support obligation as a result of his current inability to work due to incarceration. CSSD also correctly determined that, based on his current income level, Mr. N's child support obligation should be set at \$50.00 per month. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated November 25, 2013 is affirmed. Mr. N's child support obligation for three children, based on Ms. B's primary physical custody, is set at \$50 per month effective September 2013 and ongoing. There was no request for a variance under Civil Rule 90.3(c) in this appeal.

V. Child Support Order

- Mr. N is liable for child support for H, U, and Z in the amount of \$50 per month effective September 2013 and ongoing.
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated November 25, 2013 remain in full force and effect.

DATED this 1st day of May, 2014.

Signed

Jay D. Durych
Administrative Law Judge

³² Civil Rule 90.3(h)(1).

³³ 15 AAC 125.321(d).

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 19th day of May, 2014.

By: Signed
Signature
Jay D. Durych
Name
Administrative Law Judge
Title

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