

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

In the Matter of:)	
)	OAH No. 14-0166-CSS
S L. D)	CSSD No. 001118388
_____)	

DECISION AND ORDER

I. Introduction

S L. D appealed an Administrative Review Decision the Child Support Services Division (CSSD) issued in his case on December 13, 2013. The obligee child is K, 12 years of age. The other party and custodial parent is S A. X.

The formal hearing was held on March 13, 2014. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

Based upon the record and after careful consideration, Mr. D's request for a variance of his child support obligation under Civil Rule 90.3(c) is granted. Mr. D is liable for child support arrears for K as of November 2012, the month he was served with the paternity complaint. He is not liable in this administrative child support action for arrears prior to that month. Prior to service of the notice, Mr. D did not know he had a child to support because Ms. X withheld the identity of K's father from the Division of Public Assistance (DPA) and CSSD for several years.

II. Facts

Mr. D and Ms. X are the parents of K, who was born in 2001. K apparently lives full-time with her mother. Mr. D did not know he had fathered a child with Ms. X. He left Alaska in the summer of 2002 and they did not maintain contact thereafter.

K was born in September 2001. CSSD opened its case in December 2002.¹ As early as January 2003, CSSD sent Ms. X a letter asking her to identify K's father.² Ms. X did not respond, so CSSD sent her a letter stating it would have to close its child support case.³ Also, because Ms. X had not provided the name of K's father, the Division of Public Assistance (DPA)

¹ Exh. 17.
² Exh. 18.
³ Exh. 20 at pg. 1.

removed Ms. X from the public assistance grant, although payments were still made on K's behalf.⁴ In May 2003, CSSD closed its establishment case.⁵

Five years later, CSSD learned that Ms. X had verbally identified K's father to the DPA on August 4, 2008.⁶ She subsequently provided this information directly to CSSD, which began requesting assistance from the military in contacting Mr. D, as he was in the service at that time.⁷ A paternity action was initiated in the Alaska Superior Court in December 2008, but it was eventually dismissed in May 2009 because Mr. D was deployed overseas and could not be located for service purposes.⁸ Based on address information CSSD received, a second paternity action was filed in court in October 2009, but in June 2010, this action was also dismissed because Mr. D could not be located for service of the complaint.⁹ A third paternity complaint filed in September 2010 had the same result in February 2011.¹⁰

Throughout all of these events, CSSD made numerous attempts to obtain correct address information for Mr. D from the military. However, it seemed in each instance that accurate information could not be obtained or that Mr. D had already been transferred to a new duty station.¹¹ It was not until CSSD requested assistance from two battalion commanders that Mr. D's correct military address was provided in September 2012.¹² Using this information, CSSD filed a fourth paternity action in October 2012, and Mr. D was served with the paternity complaint on November 20, 2012.¹³ Genetic tests were conducted showing a 99.99% likelihood that Mr. D is K's biological father. Based on these tests, the court issued an order adjudicating Mr. D's paternity on May 6, 2013.¹⁴

After receiving the paternity judgment, CSSD began the process of establishing Mr. D's child support case for K. CSSD charged him with arrears for the period from November 2006

⁴ Exh. 20 at pg. 2.

⁵ Exh. 20.

⁶ Exh. 24.

⁷ Exhs. 25-28.

⁸ Exhs. 33-34.

⁹ Exhs. 39-42.

¹⁰ Exhs. 46-49.

¹¹ See Exhs. 29, 35-36, 38, 40, 44-45, 47-48.

¹² Exhs. 50-52.

¹³ Exhs. 53-54.

¹⁴ Exh. 2.

through September 2013.¹⁵ Based on his income for each year at issue, Mr. D's arrears totaled \$45,048.

Mr. D was married in 2009. His wife, J, is also in the military and is an E-7 with 17 years of service. Her base pay is approximately \$3,500 per month. They have two children in the home, boys who are 13 and 8 years of age. They are J's children from a prior relationship; Mr. D has not adopted them. The 8 year-old has a learning disability and requires day care and other services such as those provided by No Name Learning Center, for which they have already paid fees in excess of \$5,000.

Mr. D has two prior children for whom he pays support. The oldest is E, born in June 1995, for whom he paid support of \$250 per month from mid-2011 through June 2013, when the boy emancipated. The other child is O, born in November 1999, for whom he still pays support pursuant to a court order in the amount of \$400 per month.¹⁶

Mr. D retired from the military in February 2014. In March 2014, he received his first retirement check; the taxable amount is \$1,339.64.¹⁷ After the hearing, CSSD estimated he would receive annual income of \$16,075.68 from his retirement.¹⁸ This annual income figure yields a child support amount of \$178 per month, effective March 2014 and ongoing.¹⁹

CSSD calculated Mr. D's 2012 and 2013 child support amounts correctly at \$599 per month and \$748 per month, respectively.²⁰ The income figure for each year includes his taxable income and his military non-income benefits for housing and food.²¹ In addition, each year includes the correct deduction for paying support for prior children.

III. Discussion

Mr. D requested the formal hearing in this matter. He is not challenging the income figures CSSD used to calculate his support obligation or the resulting monthly amounts. Rather, he is disputing the effective date of the arrears in this case, claiming that it is unjust and unfair to saddle him with over \$45,000 in arrears for the time period before he was even served with the

¹⁵ Exh. 11.

¹⁶ Exh. 13. Mr. D's oldest child, T, was born in July 1994. Mr. D paid support for T pursuant to the same court order as O, of \$400 per month until T turned eighteen in July 2012.

¹⁷ Exh. 16.

¹⁸ $\$1,339.64 \times 12 = \$16,075.68$

¹⁹ Exh. 54.

²⁰ Exh. 9 at pgs. 15-18.

²¹ *Id.*

paternity complaint and learned that he had a child in Alaska to support. As the appealing party, Mr. D has the burden of proving by a preponderance of the evidence that the Administrative Review Decision affirming CSSD's initial Administrative Child Support and Medical Support Order is incorrect.²²

A noncustodial parent is required by Alaska law to reimburse the State for public assistance paid on behalf of a child to whom the parent owes a duty of support.²³ By policy and statute, however, the amount of time for which CSSD may collect child support arrears is limited to a period of six years prior to initial service on the obligor parent of paternity and/or child support documents.²⁴ Although Ms. X began receiving public assistance near the time K was born in 2001, CSSD may collect support from Mr. D only for a period of six years prior to November 2012, when he was served with the paternity complaint. Thus, he is obligated under the law to pay support for K only as of November 2006.

Child support determinations calculated under Civil Rule 90.3 are presumed to be correct. The parent may obtain a reduction in the amount, 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."²⁵ The existence of "unusual circumstances" may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.²⁶ It is appropriate to consider all relevant evidence 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).²⁷

At the request of the administrative law judge, the agency representative filed 40 additional exhibits after the hearing that consist of CSSD's records regarding its attempts to establish a child support case on K's behalf as early as December 2002. These records show that Ms. X either did not respond to CSSD and DPA, or she told them that she did not know who the father was, thus withholding Mr. D's identity from CSSD for close to six years until finally providing his name in July 2008.

²² 15 AAC 05.030(h).

²³ AS 25.27.120(a).

²⁴ AS 09.10.120(a).

²⁵ Civil Rule 90.3(c).

²⁶ Civil Rule 90.3(c)(1).

²⁷ See Civil Rule 90.3, Commentary VI.E.1.

Mr. D testified that he did not know Ms. X was pregnant, and did not know that they had a child together. Ms. X testified that she not only told Mr. D she was pregnant, but that when he saw the baby he said she did not look like him and he denied his possible paternity of the child. After considering all of the parties' testimony, Mr. D is more credible. Ms. X hesitated when describing the encounter in which she claimed Mr. D saw the baby. She could not think of what to say when asked to repeat how he had responded to being told that K was his child. It seemed that she was trying to think of a comment to attribute to him rather than repeating what he had said. It is not very believable for a woman to forget what has been said by a man who is denying his paternity of her child.²⁸

CSSD is not opposed to a variance in this case. Thus, based on the evidence in its entirety, Mr. D has proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Because Ms. X withheld his name from CSSD and DPA, Mr. D's child support obligation for K could not be established until 2012, a period of nearly ten years after CSSD first opened a case on K's behalf. The custodian's actions prevented Mr. D from the knowledge that he had a daughter in Alaska until she was 11 years old and had accrued child support arrears in excess of \$45,000. Not only was he deprived of knowing K, but he is facing arrears that he has virtually no hope of ever paying back on his retirement income.

Mr. D has shown good cause for an adjustment of his support obligation under Civil Rule 90.3(c). Mr. D was served with a paternity complaint in November 2012. It would be manifestly unjust to charge him arrears prior to that time. His obligation to pay support for K should begin in November 2012.

IV. Conclusion

Mr. D met his burden of proving by clear and convincing evidence that manifest injustice would result from a failure to vary his child support obligation for K. His arrears should commence in November 2012, and the child support figures calculated by CSSD are the amounts he should pay. The child support calculations set forth in this decision are correct and should be adopted, effective November 2012.

²⁸ This credibility finding is supported Ms. Wilcox's 2008 witness statement that provided Mr. D's name to CSSD. In it, she reported that they had been in an intimate relationship from 2001 to 2004. This could not have been possible, as Mr. D left Alaska in 2002.

V. Child Support Order

1. Mr. D is liable for support for K effective November 2012 in the amount of \$599 per month through December 2012; \$748 per month for the period from January 2013 through February 2014; and \$178 per month for March 2014 and ongoing.
2. All other provisions of the Administrative Review Decision dated December 13, 2013, remain in full force and effect.

DATED this 7th day of May, 2014.

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 27th day of May, 2014.

By: Signed

Signature
Jeffrey A. Friedman

Name
Administrative Law Judge

Title

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