

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

|                  |   |                     |
|------------------|---|---------------------|
| IN THE MATTER OF | ) |                     |
| K D. D           | ) | OAH No. 14-0298-CSS |
| _____            | ) | CSSD No. 001166704  |

**DECISION AND ORDER**

**I. Introduction**

This case is K D. D's appeal of the modification of his existing child support order for his child, K. The Alaska Child Support Services Division (Division) issued this order because U L. M, K's mother, requested a modification.

The modification order increased Mr. D's existing \$365 per month ongoing child support obligation, setting it at \$547 per month based on his 2013 reported income.

Mr. D requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on April 2, 2014. Mr. D participated. Ms. M also participated. Andrew Rawls, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on at the end of the hearing.

At the hearing, Mr. D was concerned that he would have difficulty paying the new modified ongoing child support amount. Mr. D has no children in his household, but his fiancée, who he lives with, was recently diagnosed with Lupus and had to stop work. Mr. D has become the sole breadwinner for his household while they have been seeking treatment for his fiancée. Mr. D explained that, at this time, they do not know if his fiancée will be able to return to work because they are still trying to improve and stabilize her condition.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order of \$547 per month should be affirmed. The calculations the Division used in setting modified ongoing child support in this case are correct, and those calculations use the best estimate of Mr. D's current income. Mr. D did not show by clear and convincing evidence that it would create an injustice if his modified ongoing child support for K is increased to this amount based on his increased income. Furthermore, K has special needs due to a medical condition that make his care more costly than most children.

## **II. Facts**

This case is a modification action.<sup>1</sup> Mr. D's ongoing child support for his child, K, was previously set in 2010 at \$365 per month. This monthly amount was calculated based on an estimate of Mr. D's 2010 income, which totaled \$25,979.34.<sup>2</sup>

The Division initiated a modification action because Ms. M filed a request for modification in November of 2013.<sup>3</sup> The Division issued notice of the petition for modification on November 21, 2013.<sup>4</sup>

Mr. D provided his most recent paystubs and his 2012 federal income tax return in response to the Division's request for updated income information.<sup>5</sup> The Division issued a Modified Administrative Child and Medical Support Order on June 11, 2013.<sup>6</sup> The Division's order set Mr. D's ongoing child support obligation at \$547 per month, effective December 1, 2013.<sup>7</sup> This monthly amount was calculated based on an estimate of Mr. D's annual income, which totaled \$40,680.64.<sup>8</sup> This amount includes a PFD. Mr. D was given a deduction from his income for his contributions to his retirement account. Mr. D requested a formal hearing.<sup>9</sup>

At the hearing, Mr. D provided more information about his household finances and his fiancée's medical condition. Mr. D is currently working for a bank as a loan officer. His employer has been trying to give him overtime to help pay his bills. Mr. D has no children other than K. Mr. D's has some debt, including debt to his father, which he is not making payments on at this time. Mr. D explained that his fiancée had to stop working in December of 2013. He has had to pay all their household bills with his salary since that time, and has had difficulty making ends meet. The couple is looking into their options at this time while they seek medical treatment for his fiancée. The couple may apply for disability benefits if she cannot return to work, but at this time they are hopeful that she will be able to return to work. Mr. D provided detailed information about his household finances. These expenses include some discretionary

---

<sup>1</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>2</sup> Exhibit 1, page 7.

<sup>3</sup> Exhibit 2 & the Division's Pre-Hearing Brief, page 1.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibit 6 page 1.

<sup>8</sup> Exhibit 6 page 6.

costs, such as internet services of \$70 per month, \$75 per month for cable television that almost equal the increase in his child support obligations<sup>10</sup>

Ms. M testified and provided some documentation regarding K medical condition and his special needs. While some of these costs are now covered through Medicaid, Ms. M explained that not all of her cost related to his medical condition are covered.

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations are correct and are based on the correct income information. These new calculations use the best estimate of Mr. D's current annual income. As noted above, these calculations result in a monthly child support obligation for Mr. D for K of \$547. I also find that Mr. D did not provide clear and convincing evidence that manifest injustice would result if the support award is set at this monthly amount.<sup>11</sup>

### **III. Discussion**

Mr. D did not demonstrate at the hearing that he knew what his annual earnings were in detail. Mr. D is currently in Seattle with his fiancée seeing medical specialists. This is undoubtedly a stressful time for him both financially and emotionally. The evidence in the record shows Division latest calculations use the best estimate of what he is likely to earn in 2014. The Division's estimate is based on the documentary evidence of his 2013 year-to-date income from his last paystub in 2013. Mr. D's ongoing child support should be based on this estimate of his current income.<sup>12</sup>

Mr. D is understandably concerned about the increase in his ongoing monthly child support for K at a time when he is under financial stress due to his fiancée's medical condition. This increase is due to the increase in his annual income since his ongoing monthly child support was last set. K is Mr. D's only child. Under Alaska law, K is entitled to receive 20% of Mr. D's adjusted gross income without any reduction to support Mr. D's fiancée, or pay his other debts.<sup>13</sup>

Ongoing child support should be calculated based on Mr. D's current annual income unless good cause exists to raise child support above or reduce it below the amounts calculated

---

<sup>9</sup> Mr. D's appeal is found at Exhibit 7.

<sup>10</sup> Recording of Hearing.

<sup>11</sup> Recording of Hearing & Exhibits 6 & 9.

<sup>12</sup> Alaska Civil Rule 90.3, Commentary III.E.

<sup>13</sup> Alaska Civil Rule 90.3 Commentary III.D.

using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”<sup>14</sup>

Mr. D did not show that it would be unjust to require him to pay \$547 per month in ongoing child support. Mr. D did not show that will be unable to support if his ongoing child support for K is increased to \$547 per month. Mr. D earns a good income. It is still too early to tell what the long-term financial impact of his fiancée’s medical condition will have on his finances.<sup>15</sup> While paying \$547 per month in ongoing child support may require some adjustments, Mr. D’s duty to pay the correct percentage of his income toward the ongoing support of his child, K, takes precedence over his debts and other financial obligations.<sup>16</sup>

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>17</sup> The rule states that a material change of circumstances “will be presumed” if the modified support amount would alter the outstanding support order by 15 percent.<sup>18</sup> Monthly child support of \$547 would be more than a 15 percent increase from the current order of \$365 per month.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. Following this general rule, the modification would be effective December 1, 2013, because the petition was issued in November of 2013.

#### **IV. Conclusion**

Ongoing child support should be increased due to the increase in Mr. D’s earnings that has occurred since the ongoing monthly support amount was set in 2010. Mr. D’s modified child support order should be affirmed. There is not clear and convincing evidence that manifest injustice would result if the support award is set in accordance with the calculations used in that order. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

---

<sup>14</sup> Alaska Civil Rule 90.3(c).

<sup>15</sup> Recording of Hearing.

<sup>16</sup> Alaska Civil Rule 90.3 Commentary VI.

<sup>17</sup> Alaska Civil Rule 90.3(h)(1).

<sup>18</sup> Alaska Civil Rule 90.3, Commentary X.

**V. Child Support Order**

The Division's Modified Administrative Child and Medical Support Order issued on January 29, 2014 is affirmed. Under that order, Mr. D's modified ongoing child support for K is set in the monthly amount of \$547, effective December 1, 2013.

DATED this 7th day of December, 2014.

By: \_\_\_\_\_  
Mark T. Handley  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Non-Adoption Options**

A. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about \_\_\_\_\_;

make additional findings about \_\_\_\_\_;

conduct the following specific proceedings: \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

---

B. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

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 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

---

C. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

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 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title

---

D. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title