

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

In the Matter of:)

E J. D)

) OAH No. 14-0303-CSS

) CSSD No. 001194052

DECISION AND ORDER

I. Introduction

E J. D appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on January 16, 2014. The children in this matter are N, 7, and C, 5. The other parent is T-L Q.

The formal hearing was held on April 22, 2014 and May 20, 2014. Mr. D appeared by telephone for both sessions; Ms. Q participated by telephone during the second session. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. Final record closure occurred on May 21, 2014.

Based on the record as a whole and after careful consideration, Mr. D's request for a variance under Civil Rule 90.3(c) is granted, as set forth below.

II. Facts

Mr. D and Ms. Q are the parents of N and C. Both parents are in the military and have been subject to multiple overseas deployments. They do not have a court order regarding the children, but they share custody on a fairly regular basis back and forth. When one of the parents has been deployed, Mr. D and Ms. Q worked together to try to arrange a mutually satisfactory custodial plan for the children.

Mr. D is married to Z, and they have a daughter named A, who is about 5 years of age. Mr. D was formerly stationed in No Name. He deployed overseas from there on July 4, 2013, but Z and A were in a serious motor vehicle accident soon thereafter, and Mr. D was returned to the United States on an emergency basis about ten days after his deployment. Z and A were both seriously injured in the accident. Z broke her pelvis and was in a coma. A, who was ejected from the vehicle, broke both legs and her right arm was severed. The arm was reattached surgically, but she can only use two fingers on her right hand. Both Z and A continue to receive ongoing care and physical therapy. They currently live with Z's mother in Atlanta, about 90 minutes away from where Mr. D is stationed. Z cannot work and receives \$900 per month in

disability payments. A has PTSD and receives play therapy also. She attends private school, for which Mr. D pays \$300 per month in addition to \$300 per month for utilities at his mother-in-law's residence.

Mr. D purchased a home in April 2014 with a \$1,500 down payment. He listed regular monthly expenses of approximately \$3,650,¹ but he also stated that the household expenses he identified on the hardship worksheet were from his prior residence and that he did not know what the expenses would be in the new home.

Ms. Q lives on post in No Name. She is engaged to be married in August; her fiancé is also in the military and is stationed in Alaska. Ms. Q stated she has been injured and is facing medical retirement from the service. She listed regular monthly expenses of approximately \$3,300.²

N and C were in Mr. D's home in early 2012, while the parents were deployed. The children returned to Ms. Q's physical custody in May or June 2012 and she enrolled them in school in No Name. In 2013, Mr. D was being deployed overseas. Ms. Q was not being deployed, but had to attend training. She informed Mr. D that she was taking the children to stay with her father in Jamaica, and she took them there on June 30, 2013.³ After a visit of unknown length, Ms. Q left N and C with her father, and returned to the United States. She testified that in June 2014 she would be going back to Jamaica to get the children, and would return home approximately July 9-10, 2014.

Both parties have paid support for N and C while the children have been in Jamaica with their grandfather. Mr. D provided copies of money gram receipts to S Q totaling \$1,950.⁴ Ms. Q provided receipts totaling \$4,250 to S Q, Y D and B B.⁵ The custodian testified the other recipients were the children's teachers.

¹ Exh. 12.

² Exh. 11.

³ Ms. Q testified she took the children to Jamaica on June 31, 2013, but since there are only 30 days in the month of June, it is assumed she meant June 30, 2013.

⁴ Exh. 12.

⁵ Exh. 11.

III. Discussion

As the person who filed the appeal, Mr. D has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order support order is incorrect.⁶

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD calculated Mr. D's 2013 child support at \$1,729 per month for two children based on his total income and entitlements for the year.⁷ The calculation for 2014 is lower, at \$1,159 per month for two children (\$859 for one child), because Mr. D's income is lower at his new duty station in Alabama.⁸ During the hearing, Mr. D verified that CSSD's calculations were correct, so the child support amounts are not in controversy.

Mr. D's issue on appeal is that he is being obligated to pay support for N and C when they were not in Ms. Q's custody, but, in fact, were living with her father. Ms. Q took the children to Jamaica on June 30, 2013, and applied for child support in August 2013. She stated she would bring N and C back to Alaska on or about July 9-10, 2014. Using CSSD's calculations, Mr. D is liable for support totaling \$15,559 during that period.

After the hearing, CSSD filed a Submission to Record that states pursuant to its regulations, the agency would be deferring Mr. D's child support during the period of time Ms. Q did not have physical custody of N and C. Also, CSSD stated it would have to reinstate all deferred support upon receiving an application for services.

The regulation at issue states as follows:

(d) The agency will defer ongoing support accruing under an administrative support order of this state if

(1) the custodian of the child no longer maintains physical custody and an application for services from a third-party custodian has not been made; or

(2) the custodian of the child submits a written withdrawal from agency services.

(e) If support is deferred under (d) of this section, the agency will reinstate all deferred support upon receipt of an application for services from a party entitled to support under AS 25.27.100.^[9]

⁶ 15 AAC 05.030(h).

⁷ Exh. 7 at pgs. 8-9.

⁸ Exh. 7 at pgs. 11-12.

⁹ 15 AAC 125.870(d)-(e).

It is not clear from reading the regulation, or from CSSD's Submission to Record, what the process is for an obligor parent to have his or her child support deferred, but Mr. D should follow up on this with his caseworker at CSSD. A more pressing problem for him is that once the children return to Ms. Q or another application for services is filed, Mr. D will be liable for all of the arrears that accrued during the time N and C were with their grandfather in Jamaica, in addition to the \$1,159 per month ongoing amount.

Mr. D has requested a hardship variance from the child support in this case. 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."

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. In this appeal, a primary factor is that the children have not been in Ms. Q's custody for the past year – they have been in Jamaica with their maternal grandfather. Both parties have sent money to Mr. Q, although Ms. Q has sent \$4,250 to her father and Mr. D has sent only about \$1,950. Another factor to be considered is that Mr. D has had additional expenses related to the accident that his wife and younger child were in. He pays \$600 per month for A's school and expenses at Z's mother's home.

Based on all the evidence, Mr. D proved by clear and convincing evidence that manifest injustice would result if his child support were not reduced from the amounts calculated pursuant to Civil Rule 90.3. His child support should be set at \$800 per month for the period of time N and C were in Jamaica. Upon proof from Ms. Q that the children are back in her custody, or an application from another custodian who is entitled to support for N and C, Mr. D's child support should return to the 2014 amount of \$1,159 per month. This variance for what appears to be about 11 months equals a reduction of approximately \$7,599 for Mr. D, and it should assist him in retiring the arrears in this matter. The variance also takes into consideration the support of approximately \$1,950 that Mr. D sent directly to Mr. Q in Jamaica.

IV. Conclusion

Mr. D met his burden of proving by clear and convincing evidence that manifest injustice would result if his child support obligation were not varied from the amount calculated by CSSD

under Civil Rule 90.3. His child support amount for N and C should be set at \$800 per month, effective August 2013. Upon the close of the deferment period under 15 AAC 125.870(d)-(e), Mr. D's support obligation should return to the 2014 calculation of \$1,159 per month for two children (\$859 for one child).

V. Child Support Order

- Mr. D is liable for child support for N and C in the amount of \$800 per month, effective August 2013;
- Upon proof from Ms. Q that the children are back in her custody, or CSSD receives an application for services from another custodian who is entitled to support for N and C, Mr. D's child support should return to the 2014 amount of \$1,159 per month;
- All other provisions of the Amended Administrative Child and Medical Support Order dated January 16, 2014 remain in full force and effect.

DATED this 18th day of September, 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 19th day of September, 2014.

By: *Signed* _____
Signature
Angela M. Rodell
Name
Commissioner
Title

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