

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

In the Matter of:)
)
U A. T) OAH No. 14-0323-CSS
) CSSD No. 001163336
_____)

DECISION

I. Introduction

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order changing the monthly child support amount U T was required to pay to \$342 per month. Mr. T appealed.

Because Mr. T' child support obligation modification complies with Civil Rule 90.3 and the evidence does not support a variance from that rule, CSSD's Modified Order is affirmed.

II. Facts

The following facts are established by a preponderance of the evidence.

U T is the father of B.¹ B lives with his mother, B F.² Mr. T also supports a subsequent biological child.³ The support order at issue here only involves B.

On July 14, 2011, CSSD issued an Administrative Review Decision setting child support for B at \$258 per month.⁴ On August 29, 2013, Mr. T requested a review of the child support order, stating the payment was too high.⁵ On December 26, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order setting child support at \$342 per month.⁶ The order was based on a 40 hour work week.⁷ Mr. T makes \$12 per hour and generally works 27 - 32 hours per week.⁸

Mr. T appealed the new order.⁹ The basis of Mr. T' appeal is that he does not work 40 hours a week.¹⁰ An initial hearing was held on March 24, 2014. The hearing was continued

¹ (DOB 00/00/2006).

² Exhibit 8; hearing testimony.

³ T testimony; Ex. 14. X.T. was born after B. Per Civil Rule 90.3, Commentary III.D, modifications are not granted for subsequent children.

⁴ Ex. 4.

⁵ Ex. 5.

⁶ Ex. 8.

⁷ Crisp testimony; Ex. 7.

⁸ T testimony; 14.

⁹ Ex. 9.

until April 11, 2014, in order to receive updated income information from Mr. T. Ms. F chose not to participate in the April 11, 2014 hearing.

CSSD recalculated Mr. T' support obligation based on Mr. T March 24, 2014, testimony.¹¹ After receiving Mr. T' actual income information, CSSD again recalculated the support obligation.¹² CSSD based the updated calculations on Mr. T' 2013 tax information, with a gross income of \$21,295.50.¹³ CSSD calculated a monthly child support obligation of \$293.¹⁴

Mr. T requested that the state remove interest on arrears.¹⁵ CSSD explained that arrears are in three separate pots; interest owed to the State of Alaska, interest owed to Ms. F, and interest coded as Tribal Temporary Assistance for Needy Families.¹⁶ Mr. T was advised to contact the tribal organization and the State to request waiver of interest.¹⁷ CSSD informed Mr. T that Ms. F could waive the interest on arrears owed to her.¹⁸ Ms. F was contacted and agreed to waive the \$877.59 in interest owed to her on arrears.¹⁹ The interest made up the bulk of the arrears.²⁰ Mr. T owes Ms. F \$158.50 in arrears after the removal of interest.²¹

Mr. T stated that the child support obligation is too high.²² Mr. T testified that he was caring for two other children on fifty dollars a month and paying many times that amount for one child.²³ He reported frustration with the obligation amount and arrears paid in the last year by funds from his federal tax refund.²⁴

III. Discussion

As the person who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was

¹⁰ Ex. 9.

¹¹ Ex. 13. The \$248 per month child support obligation was based on 29.5 hours of work at \$12 per hour. Mr. T actual income information shows a higher income.

¹² Ex. 15.

¹³ Ex. 14. CSSD also submitted Ex. 16, which calculated Mr. T' support obligation based on projected income for 2014. CSSD mistakenly calculated this 2014 calculation at 40 hours per week because it thought his paychecks indicated fulltime employment. Mr. T explained that the checks were for a two week period and he was not employed 40 hours per week. CSSD requested that Ex. 16 not be relied upon based on this clarification.

¹⁴ Ex. 15.

¹⁵ T testimony.

¹⁶ Crisp testimony.

¹⁷ Crisp testimony.

¹⁸ Crisp testimony.

¹⁹ F testimony.

²⁰ Crisp testimony.

²¹ Crisp testimony. Arrears and interest on arrears are as of April 11, 2014.

²² T testimony.

²³ T testimony. Mr. T stated he is caring for X.T. and a grandchild.

²⁴ T testimony; Ex. 14.

incorrect.²⁵ Mr. T' initial appeal requested an adjustment based on actual hours worked.²⁶ CSSD agreed at hearing to calculate Mr. T' obligation based on actual hours worked and not a 40 hour workweek. Mr. T' second argument on appeal appears to be that his income and expenses do not allow him to pay the obligation set by CSSD.

Child support obligations are determined under Civil Rule 90.3.²⁷ For a non-custodial parent of one child, like Mr. T, this obligation is set at 20 percent of his adjusted annual income.²⁸ The rules permit a variance to a child support obligation when an obligor proves by clear and convincing evidence that manifest injustice would result without a variance from the established guidelines.²⁹ Mr. T has not met that burden. Mr. T' expenses and circumstances are relatively typical³⁰ and do not meet the requirements for a variance from the rule.³¹ Therefore, CSSD must follow the Civil Rule 90.3 formula when calculating Mr. T' child support.³²

Under the rule, child support is calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in Civil Rule 90.3.³³ Here, CSSD estimated Mr. T' current income based on his most recent W-2.³⁴ It applied the formula in Civil Rule 90.3(a)³⁵ to determine ongoing support for B effective September 1, 2013 and the evidence does not support a variance from the rule.

IV. Conclusion

Through the hearing process, CCSD correctly modified Mr. T' ongoing child support obligation. This child support obligation was calculated using the primary custody formula in Civil Rule 90.3(a). Mr. T did not provide clear and convincing evidence that applying Civil Rule 90.3(a) would result in manifest injustice.

V. Order

1. Mr. T' modified ongoing support for B is set at \$293 per month.
2. The \$877.57 in interest on arrears owed to Ms. F is waived.

²⁵ 15 AAC 05.030(h).

²⁶ Ex. 9.

²⁷ 15 AAC 125.010 adopts Civil Rule 90.3 as the agency's child support guidelines.

²⁸ Alaska R. Civ. Pro. 90.3(a); 15 AAC 125.070.

²⁹ Alaska R. Civ. Pro. 90.3(c); 15 AAC 125.075.

³⁰ See Ex. 14, pg. 2.

³¹ Alaska R. Civ. Pro. 90.3(c); 15 AAC 125.075.

³² Alaska R. Civ. Pro. 90.3(a); 15 AAC 125.070.

³³ Alaska R. Civ. Pro. 90.3(a).

³⁴ Exhibit 14.

³⁵ Crisp testimony; Ex. 8.

3. All other provisions of CSSD's December 26, 2013, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED: May 5, 2014.

By: Signed
Bride Seifert
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 29th day of May, 2014.

By: Signed
Signature
Stephen C. Slotnick
Name
Administrative Law Judge
Title

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