

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

In the Matter of: )  
 )  
 T L ) OAH No. 14-0345-CSS  
 ) CSSD No. 001173782

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**DECISION**

**I. Introduction**

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order, adding J to the existing order and changing the monthly child support amount T L was required to pay to \$389 per month. Mr. L appealed.

Because Mr. L's 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**

T L is the father of four children.<sup>1</sup> Two of them, Z and J, live with their mother, K L.<sup>2</sup> Mr. L also helps support K L's third child, even though he is not the biological father.<sup>3</sup> K L is not the mother of Mr. L's other children. The support order at issue here only involves Z and J. None of the children live with Mr. L.<sup>4</sup>

On April 22, 2011, CSSD issued an Administrative Child Support and Medical Support Order, setting child support for one child, Z, at \$50 per month.<sup>5</sup> At that time, Mr. L was incarcerated<sup>6</sup> and \$50 per month is the minimum child support obligation.<sup>7</sup>

J was born on September 4, 2013, and went on public assistance.<sup>8</sup> CSSD began review of the 2011 child support order because J was not covered on the order.<sup>9</sup> On January 7, 2014, CSSD served Notices of Adding a Child to a Child Support Order and Petition for

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<sup>1</sup> L testimony. J (DOB 00/00/2013) and Z (DOB 00/00/08) are the subjects of this decision. Mr. L reported that his other children were born in 2004 and 2005, but did not provide reliable evidence of a child support obligation or specific amounts of support provided.

<sup>2</sup> Exhibit 3.

<sup>3</sup> L testimony.

<sup>4</sup> L testimony.

<sup>5</sup> Ex. 1.

<sup>6</sup> CSSD pre-hearing brief; Ex. 2.

<sup>7</sup> Civil Rule 90.3(c)(3); 15 AAC 125.075(d).

<sup>8</sup> CSSD pre-hearing brief.

<sup>9</sup> Division Exhibit 3

Modification.<sup>10</sup> A Modified Administrative Child Support and Medical Support Order was issued on February 4, 2014, which set support for J and Z at \$389 per month.<sup>11</sup> Mr. L appealed this order, requesting CSSD to modify the amount to \$100 to \$150 per month.<sup>12</sup> The reason for his request is that he did not have a high enough income and that he had too many expenses to pay that much support.<sup>13</sup>

A hearing was held on March 17, 2014. Mr. L and K L both testified on Mr. L's behalf. Mr. James Pendergraft represented CSSD.

CSSD calculated Mr. L's child support obligation according to Civil Rule 90.3.<sup>14</sup> At the time of the initial modification Mr. L was on unemployment.<sup>15</sup> At the time of the hearing, Mr. L was again working at the No Name, a seasonal restaurant, but not on a full-time basis.<sup>16</sup> The No Name submitted 2013 employee and income verification on Mr. L for 2013.<sup>17</sup> The No Name information reported Mr. L's gross earnings at \$18,607.61. The No Name information also lists that Mr. L makes \$12.50 an hour, 40 hours a week during the season.<sup>18</sup> CSSD did not have other recent income information for Mr. L.<sup>19</sup>

CSSD calculated Mr. L's child support obligation based on his No Name and PFD earnings.<sup>20</sup> CSSD calculated Mr. L's ongoing obligation for two children at twenty-seven percent of his adjusted annual income or \$389.00 per month, effective February 2014.<sup>21</sup> CSSD calculated \$505 in child support arrears for J for September 2013 through January 2014.<sup>22</sup>

At hearing, Mr. L testified credibly that he helps support all of his children, as well as Ms. L's third child.<sup>23</sup> Ms. L's testimony supported these assertions.<sup>24</sup> Mr. L pays for Ms. L's

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<sup>10</sup> Ex. 3.

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 6.

<sup>13</sup> Ex. 6.

<sup>14</sup> Ex. 5; Pendergraft testimony. Mr. Pendergraft originally stated that the calculation was based on a year round 40 hour work week. However, he later clarified and the documentation supports that the calculation was based on income information submitted by Mr. L's employer on January 21, 2014 (*See* Ex. 4). The income information takes into account the seasonal nature of Mr. L's employment.

<sup>15</sup> L testimony; Ex. 6.

<sup>16</sup> L testimony.

<sup>17</sup> Ex. 4.

<sup>18</sup> Ex. 4.

<sup>19</sup> Pendergraft testimony; exhibits.

<sup>20</sup> Ex. 5.

<sup>21</sup> Ex. 5.

<sup>22</sup> Ex. 5, p. 9; 15 AAC 125.340; *Spott v. Spott*, 17 P.3d 52, 55 (Alaska 2001).

<sup>23</sup> L testimony.

<sup>24</sup> K L testimony.

car and car insurance, helps with diapers, utilities, and other expenses as needed.<sup>25</sup> Mr. Pendergraft explained that these payments may be available to make a one-time adjustment for “in-kind” payments to Mr. L’s support obligations.<sup>26</sup>

Ms. L does not want Mr. L to have to pay child support.<sup>27</sup> Ms. L explained that she will only receive \$50 in child support payments from Mr. L because the rest will go to reimburse public assistance for its payments to her children.<sup>28</sup> Ms. L also explained that if Mr. L has the child support obligation deducted from his pay check he will not have funds available to contribute like he currently does for a vehicle, diapers, food, and other expenses.<sup>29</sup> Ms. L testified that her public assistance amount is already reduced because she reports that Mr. L assists her with expenses.<sup>30</sup>

Mr. L testified that he does not have the income to pay the \$389 per month child support and adequately cover his living expenses. Mr. L is required to pay \$300 per month in restitution in addition to regular living expenses.<sup>31</sup> Mr. L objected to CSSD using income information from the previous season to calculate his ongoing obligation.<sup>32</sup>

Mr. L also testified that he buys food and clothing and helps out in other ways to support his two older children.<sup>33</sup> Mr. L was not sure if he was under a child support order for his other children, but was going to check and supply that information after the hearing.<sup>34</sup>

CSSD questioned Mr. L about the categories of deductible expenses described in Civil Rule 90.3, and asked Mr. L to fill out the “Formal Hearing Expense Worksheet” and provide additional documentation on income, expenses, and child support for other children.<sup>35</sup> Mr. L agreed, and the record was held open until April 7, 2014, for Mr. L to supplement the record.<sup>36</sup> No additional information was a received.

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<sup>25</sup> L and K L testimony.  
<sup>26</sup> Pendergraft testimony; 15 AAC 125.470.  
<sup>27</sup> K L testimony.  
<sup>28</sup> K L testimony.  
<sup>29</sup> K L testimony.  
<sup>30</sup> K L testimony.  
<sup>31</sup> Ex. 6.  
<sup>32</sup> L testimony.  
<sup>33</sup> L testimony.  
<sup>34</sup> L testimony.  
<sup>35</sup> Pendergraft testimony.  
<sup>36</sup> L testimony.

### III. Discussion

As the person who filed the appeal, Mr. L has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>37</sup> Mr. L's primary argument on appeal is that his expenses are too high for him to pay the obligation set by CSSD. The record was held open for Mr. L to submit an expense worksheet showing his current income information, his debts, his expense obligations for care of his other children, and other documentation that would support a variance from the Modified Administrative Child Support and Medical Support Order. He did not provide that information.

Child support obligations are determined under Civil Rule 90.3.<sup>38</sup> For a non-custodial parent of two children, like Mr. L, this obligation is set at 27 percent of his adjusted annual income.<sup>39</sup> 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.<sup>40</sup> Mr. L has not met that burden. His reported expenses are high, but aside from the restitution, relatively standard.<sup>41</sup> His expenses and circumstances do not meet the requirements for a variance from the rule.<sup>42</sup> Therefore, CSSD must follow the Civil Rule 90.3 formula when calculating Mr. L's child support.<sup>43</sup>

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.<sup>44</sup> Here, CSSD estimated Mr. L's current income based on his most recent earnings from the No Name.<sup>45</sup> It applied the formula in Civil Rule 90.3(a) to determine ongoing support for Z and J effective February 1, 2014, and arrears for J for September 2013 through January 2014.<sup>46</sup> CSSD reasonably based its calculations for estimating Mr. L's annual income on the most recent

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<sup>37</sup> 15 AAC 05.030(h).

<sup>38</sup> 15 AAC 125.010 adopts Civil Rule 90.3 as the agency's child support guidelines.

<sup>39</sup> Alaska R. Civ. Pro. 90.3(a); 15 AAC 125.070.

<sup>40</sup> Alaska R. Civ. Pro. 90.3(c); 15 AAC 125.075.

<sup>41</sup> Mr. L reported expenses mainly related to restitution, caring for his children, and paying for Ms. L's vehicle.

<sup>42</sup> Alaska R. Civ. Pro. 90.3(c); 15 AAC 125.075.

<sup>43</sup> Alaska R. Civ. Pro. 90.3(a); 15 AAC 125.070.

<sup>44</sup> Alaska R. Civ. Pro. 90.3(a).

<sup>45</sup> Exhibit 19.

<sup>46</sup> Ex. 5.

income information available, the No Name information provided in January 2014.<sup>47</sup> Mr. L's argument that his income may be different in the future is not an adequate basis for lowering his child obligation.

The rules require the state to modify an existing child support order if a child of the relationship receives public assistance.<sup>48</sup> Alaska law requires Mr. L to reimburse the state for public assistance provided to a child that he has a duty to support.<sup>49</sup> Mr. L may not make payments directly to Ms. L to avoid this obligation.

Accordingly, the Division's most recent calculation of Mr. L's child support obligation is affirmed.

The parties are encouraged to contact CSSD to determine if a one-time "in-kind payment" adjustment is appropriate for Mr. L's support payments to Ms. L.

#### **IV. Conclusion**

CCSD correctly modified Mr. L's ongoing child support obligation and added J to the child support order. This child support obligation was calculated using the primary custody formula in Civil Rule 90.3(a). Mr. L did not provide clear and convincing evidence that applying Civil Rule 90.3(a) would result in manifest injustice.

#### **V. Order**

1. The Division's Amended Modified Administrative Child Support and Medical Support Order dated February 4, 2014, is affirmed.
2. Mr. L's modified ongoing support for J and Z is set at \$389 per month.

DATED: April 28, 2014.

By: Signed  
Bride Seifert  
Administrative Law Judge

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<sup>47</sup> See, e.g., *In the Matter of K.L.G.*, OAH No. 07-389-CSS (Commissioner of Revenue 2007) ("the most reliable evidence of income Mr. G. will earn when paying future monthly child support are his current earning records"). The only earning records in evidence are those provided by the No Name.

<sup>48</sup> 15 AAC 125.340.

<sup>49</sup> Alaska Statute 25.27.120(a); 15 AAC 125.105(a)(1).

## 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 12<sup>th</sup> day of May, 2014.

By: Signed  
Signature  
Bride A. Seifert  
Name  
Administrative Law Judge  
Title

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