

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

In the Matter of:)	
)	OAH No. 14-0347-CSS
A J)	CSSD No. 001190361
_____)	

DECISION AND ORDER

I. Introduction

A J appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on October 7, 2013. The obligee child is E, 15 years of age. The other parent is G J.

The formal hearing was held on March 20, 2014. Mr. J appeared by telephone; Ms. J's telephone had been disconnected, so she could not be reached for the hearing and thus did not participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded. Final record closure occurred on May 9, 2014.

Based on the record as a whole and after careful consideration, Mr. J's request for a hardship variance is granted because he currently has custody of all four of the parties' children. His child support is set at \$100 per month from February 2013 through February 2014. Ongoing child support is suspended as of March 1, 2014 because Mr. J was awarded custody of E in February 2014.

II. Facts

A and G J are the parents of U, 19; K, 18; E, 15; and D, 12. The parties have exercised divided custody of the children since they separated in 2011: Ms. J has had custody of E, and Mr. J has had custody of the parties' three other children.

U is currently attending boarding school during the school year. She will graduate at the end of the 2013-2014 school year, so for child support purposes, she will become emancipated at the end of this school year. It was previously reported to CSSD that she graduated and thus emancipated in 2013, but she will not graduate until 2014.¹

K is also still attending school. He has Downs Syndrome and is a special needs child, so he requires the assistance of a special teacher. In addition, Mr. J has incurred extra costs in

¹ Mr. J's hearing testimony.

caring for K, such as new clothing because the child has had a rapid weight gain recently.² D, the youngest child of the marriage, has been in Mr. J's care since the parties separated. She is also attending school on a regular basis.³

E has been in Ms. J's care most of the time since the parties separated. In a juvenile criminal matter that arose in 2012, E was released into Mr. J's custody on February 14, 2014 and remains in the obligor's home.⁴

Pursuant to the divided custody calculation prepared by CSSD, Mr. J's child support obligation for E is \$304.29 per month.⁵ This calculation compares Mr. J's adjusted annual (net) income, \$31,744.02, with Ms. J's adjusted annual income, \$8,173.64. It is difficult to understand how the mathematics of the calculation works, so essentially, because Mr. J had a significantly higher income in 2013, his support obligation to Ms. J is higher than her obligation to support the three children in his care. The difference between his obligation and her obligation is \$3,651.50. When divided by 12 months, the difference between the two parent's obligations equals \$304.29 per month.⁶ This figure constitutes Mr. J's calculated support obligation without consideration of his overall financial circumstances, which will be discussed below.

III. Discussion

As the person who filed the appeal, Mr. J 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.⁷

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 has calculated his support obligation for 2013 at \$304.29 per month during those months in which Ms. J had custody of E and Mr. J had custody of all three of the parties' other children. Mr. J does not contest this figure. Rather, his appeal claims that, based on his family's circumstances, he cannot afford the child support amount, particularly because E is now living with him in the home with the other children.

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

² *Id.*

³ *Id.*

⁴ Exh. 8.

⁵ Exh. 6 at pg. 9.

⁶ *Id.*

⁷ 15 AAC 05.030(h).

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, several factors should be considered. First, Mr. J was awarded custody of E as a condition of the child’s probation, and it appears that he will remain throughout his minority in the obligor’s home. Second, K is a special needs child who requires additional expenditures on Mr. J’s part. Third, all of the children are now in Mr. J’s home.⁸

With E in the home, any child support Mr. J actually has to pay on the arrears in this case would deprive both E and his siblings of the support they need on a day-to-day basis. This essentially makes E and the other children bear the present burden of the child support arrears going back to February 2013. It would thus be even harder for Mr. J to provide basics as food, housing and utilities for his children.

The Alaska Supreme Court holds that factors such as these, which relate to the well-being of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term “good cause,” however, is to “be determined by the context in which it is used.”⁹ That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, commentary at sec. I(B).^{10]}

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. J proved by clear and convincing evidence that manifest injustice would result if his child support were not reduced. It makes little sense, and it would be unjust, to burden his household by adding more child support debt to his obligation to support E and the other children in the home currently. Mr. J’s child support should be set at \$100 per month. This constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). This will result in him having arrears in the approximate amount of \$1,300 for the 13 months at issue up to March 2014, the first month Mr. J’s support obligation is suspended.

⁸ Also, CSSD does not oppose a variance in this case.

⁹ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

¹⁰ *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

Under CSSD's regulation regarding payment amounts, it appears that Mr. J will have to pay \$75 per month toward this debt.

IV. Conclusion

Mr. J 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 should be varied under Civil Rule 90.3(c) to \$100 per month from February 2013 through February 2014, and his obligation should be suspended as of March 1, 2014, because he was awarded custody of E in February 2014.

V. Child Support Order

- Mr. J is liable for child support in the amount of \$100 per month from February 2013 through February 2014;
- Mr. J's child support is suspended as of March 1, 2014, because he was awarded custody of the obligee E on February 14, 2014.

DATED this 29th 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 16th day of June, 2014.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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