

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

IN THE MATTER OF)

S J. D)

OAH No. 14-0465-CSS¹

CSSD No. 001099052

DECISION AND ORDER

I. Introduction

This case is S J. D's appeal of the modification of his existing child support order for his children, V and U. The Alaska Child Support Services Division (Division) issued this order because B A. H, V and U's mother, requested a modification.

The modification order increased Mr. D's existing \$50 per month ongoing child support obligation, setting it at \$773 per month for the two children based on his last four quarters of 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 16, 2014. Mr. D participated. Ms. H 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 because he is having difficulty paying the new modified ongoing child support amount. Mr. D has no children in his household. He lives with his fiancée, who also works and splits their household expenses with him. Mr. D has debts and has had difficulty making payments on these debts.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's modification order of \$773 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 V and U is increased to this amount based on his increased income since 2003.

¹ Although the Notices and Filings in this case are numbered 14-0461-CSS, the correct OAH number for this case is 14-0465-CSS.

II. Facts

This case is a modification action.² Mr. D's ongoing child support for his children, V and U, was previously set in 2003 at \$50 per month. This monthly amount was calculated based on an estimate of Mr. D's 2003 income, which totaled \$3,034.³

The Division initiated a modification action because Ms. H filed a request for modification in December of 2013.⁴ The Division issued notice of the petition for modification on December 18, 2013.⁵

Mr. D's employer provided income information.⁶ The Division issued a Modified Administrative Child and Medical Support Order on February 24, 2014.⁷ The Division's order set Mr. D's ongoing child support obligation at \$773 per month, effective January 1, 2014.⁸ This monthly amount was calculated based on an estimate of Mr. D's annual income, which totaled \$42,163.64.⁹ This amount includes a PFD. The Division used the last quarter of 2012 and the first three quarters of Mr. D's reported earnings to estimate his annual income. Mr. D's reported annual earnings for the past three years are close to the amount the Division used in its calculations.¹⁰

Mr. D requested a formal hearing.¹¹

At the hearing, Mr. D provided more information about his household finances. Mr. D is currently working for the local power plant in Alaska. He sometimes works full-time. He also works some overtime, but this overtime is difficult to predict because it often occurs when there is a problem at the plant. Mr. D has no children in his household. He lives with his fiancée, who also works and splits their household expenses with him. Mr. D has several debts. Mr. D explained that his total debts are about \$8000 and he has had difficulty making payments on

² Alaska Civil Rule 90.3(h) governs modification actions.

³ Exhibit 1, page 5.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 6.

⁸ Exhibit 6 page 1.

⁹ Exhibit 6 page 6.

¹⁰ Recording of Hearing.

¹¹ Mr. D's appeal is found at Exhibit 7.

these debts.¹²

Ms. H also lives in Alaska. Ms. H testified and explained that she understood that Mr. D would have difficulty paying the new ongoing child support amount.¹³

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 V and U of \$773. Mr. D did meet his burden of proof to show good cause to move the effective date forward past January of 2014. 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.¹⁴

III. Discussion

In a child support hearing, a person who files the appeal has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁵ Mr. D did not challenge the Division's estimate of his annual earnings. 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 last four quarters of his reported earnings. Mr. D's ongoing child support should be based on this estimate of his current income.¹⁶

Mr. D is understandably concerned about the large increase in his ongoing monthly child support for V and U. This increase is due to the increase in his annual income in the ten years since his ongoing monthly child support for the two children was last set at the minimum of \$50 per month. V and U are the only children Mr. D has a duty to support. Under Alaska law, V and U is entitled to receive 27% of Mr. D's adjusted gross income without any reduction to pay his other debts.¹⁷

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

¹² Recording of Hearing.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Exhibits 6 & 7.

¹⁵ Alaska Regulation 15 AAC 05.030(h).

¹⁶ Alaska Civil Rule 90.3, Commentary III.E.

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.”¹⁸

Mr. D did not show that it would be unjust to require him to pay \$773 per month in ongoing child support. Mr. D did not show that will be unable to support himself if his ongoing child support for V and U is increased to \$773 per month. Mr. D earns a good income. While paying \$773 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 older child, V and U, takes precedence over his debts and other financial obligations.¹⁹

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.²⁰ 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.²¹ Monthly child support of \$773 would be more than a 15 percent increase from the current order of \$50 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 January 1, 2014, because the petition was issued in December of 2013.

The effective date of a modification cannot predate the service of the petition for modification even when it would clearly prevent an injustice.²² The effective date of a modification can, however, be moved forward upon a mere showing that there is good cause to do so.²³ Moving the effective date of a modification forward from the first of the month following the service of the petition for modification is not a variance of the child support guidelines, requiring clear and convincing evidence that moving the date forward is needed to

¹⁷ Alaska Civil Rule 90.3 Commentary III.D.

¹⁸ Alaska Civil Rule 90.3(c).

¹⁹ Alaska Civil Rule 90.3 Commentary VI.B.4.

²⁰ Alaska Civil Rule 90.3(h)(1).

²¹ Alaska Civil Rule 90.3, Commentary X.

²² *See State, Dept. of Revenue, Child Support Enforcement Div. v. Schofield*, 993 P2d 405, (Alaska 1999).

²³ *Alaska Dept. of Revenue, CSED v. Kevin Lyn Dillon* 977 P2d 118, (Alaska 1999).

prevent an injustice under Civil Rule 90.3(c).

There is not good cause to move the effective date forward from January 1, 2014. Although Ms. H was willing to move the effective date of the modification forward in order to help Mr. D adjust to this added financial obligation, the Division objected and pointed out that the children have intermittently needed public assistance during the past year. Given the apparent needs of V and U and the fact that there are no children in Mr. D's household, there is not good cause to move the effective date of the modification forward in this case.

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 2003. 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).

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on February 24, 2014 is affirmed. Under that order, Mr. D's modified ongoing child support for V and U is set in the monthly amount of \$773, effective January 1, 2014.

DATED this 16th day of April, 2014.

By: Signed
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 6th day of May, 2014.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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