

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

IN THE MATTER OF)
G J. K) OAH No. 14-0573-CSS
_____) CSSD No. 001148110

DECISION AND ORDER

I. Introduction

This case is G J. K's appeal of an order issued by the Child Support Services Division (Division), which increased his ongoing monthly child support obligation. The order being appealed is the Division's Modified Administrative Child and Medical Support Order, which granted Mr. K's request for a modification of his ongoing child support order for his three children, Z, U and E, but increased the monthly amount. Mr. K had asked that the ongoing amount be decreased. This order was issued on February 1, 2014.

On May 6, 2014, a hearing was held to consider Mr. K's appeal. N H. Q, the custodial parent in this case, did not participate. Mr. K also participated. The Child Support Services Division (Division) was represented by James W. Pendergraft, Child Support Services Specialist. After that hearing, the Division provided new calculations, as requested. The record closed on June 3, 2014.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be adjusted. Mr. K's ongoing child support obligation for Z, U and E should be modified because there has been a change in the parties' circumstances that would justify a modification of child support, but there is also clear and convincing evidence in the record that in order to avoid injustice, Mr. K's ongoing child support for all of his eight minor children should give each child an eighth of an eight-child-order. That order should be calculated using an estimate Mr. K's earning capacity. This approach results in a total ongoing child support obligation of \$1,406 per month for all eight children, which is 48% of Mr. K's adjusted monthly income. This amounts to \$176 per month for each child, or \$528 per month for Z, U and E, the three children covered by this order. Only E is currently the only one of these three children in Ms. Q's custody, so this order will only be for \$176. Mr. K will need to request modifications of his other child support orders if he wishes to have them lowered.

II. Facts

This case is a modification action.¹ The Division granted Mr. K's request for modification review because the Division determined that there would not be a 15% change in Mr. K's ongoing child support amount based on Mr. K's reported earnings. Mr. K's current ongoing child support was set at the minimum of \$319 per month in 2000.²

The Division initiated a modification action because Mr. K's filed a request for modification in January of 2014.³ The Division issued notice of the petition for modification on January 31, 2014.⁴

Mr. K provided income information.⁵ The Division issued a Modified Administrative Child and Medical Support Order on February 1, 2014.⁶ The Division's order set Mr. K's ongoing child support obligation at \$590 per month, effective February 1, 2014.⁷ This monthly amount was calculated based on an estimate of Mr. K's 2013 annual income, which totaled \$32,048.91.⁸ This amount includes a PFD.

Mr. K requested a formal hearing.⁹

Mr. K is unemployed. He was working as a cook. He still thinks that he will be able to earn about what he did in 2014. Mr. K lives in a remote village on the west coast of Alaska. Mr. K use to work on a barge and in construction. He is going to try to get work on a barge or in construction again. Mr. K testified that he is currently living with five of his children that are younger than the children in this order. There is a custody agreement that the Division was not aware of that gives custody of U to Mr. K. U is presently in state custody until the summer when he will return to Mr. K's household. The Division is currently in the process of establishing a

¹ Alaska Civil Rule 90.3(h) governs modification actions.

² Recording of Hearing & Exhibits 1.

³ Exhibit 2.

⁴ Exhibit 3.

⁵ Exhibit 6.

⁶ Exhibit 5.

⁷ Exhibit 5 page 1.

⁸ Exhibit 5 page 6.

⁹ Mr. K's appeal is found at Exhibit 7.

state custody order for U.¹⁰

The custody agreement gave Ms. Q primary custody of E. Z has been living with Mr. K's grandparents in No Name for many years. Z will soon be an adult. Mr. K has other biological children living in No Name who has a different mother. Those children have a child support order of \$477 per month. Mr. K has a total of 16 biological children with several different mothers plus one adopted child who he is not paying support for. Only eight are minor biological children. In addition to the order for the three children in this case, Mr. K has two other child support orders that require him to pay support including one that is arrears for an adult child, C.¹¹

After the hearing, as ordered, the Division provided new calculations based on the updated custody information estimating Mr. K's income using his wage at his last job. These calculations resulted in an ongoing child support amount of \$176 for the three children of this order, Z, U and E.¹² The calculations results in a total ongoing child support obligation of \$1,406 per month for all eight children, which is 48% of Mr. K's adjusted monthly income. This amounts to \$176 per month for each child, or \$528 per month for Z, U and E, the three children covered by this order. E is currently the only one of these three children in Ms. Q's custody. This order only needs to cover E at \$176 per month. The monthly amount for the children of this order is not reduced by the disproportionately large amount that Mr. K's is required to pay for his other minor child, but this order is calculated assuming that there will soon be a modification of that order.¹³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. K, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ At the hearing, Mr. K showed that the Division's determination that there had not been a material change in circumstance that would justify a modification of ongoing child support was

¹⁰ Recording of Hearing.

¹¹ Recording of Hearing-Testimony of Mr. K.

¹² Recording of Hearing & Exhibits 10-12.

¹³ Recording of Hearing.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

incorrect.¹⁵ Mr. K is entitled to a decrease of his ongoing child support because U and Z are in third party custody and E is the only child in Ms. Q's custody.

There is clear and convincing evidence in the record of unusual circumstances in this case. Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹⁶ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁷ Good cause includes a finding of unusual circumstances.¹⁸

To understand the unusual circumstances of this case, one must consider the full extent of Mr. K's obligation to support children of different relationships. Mr. K has eight minor children and one adopted child with several different mothers. He supports five of these children in his home and he is not currently employed. He has three separate child support orders, including this one and will soon have another one for U.

Alaska Civil Rule 90.3(a)(2) appears to recognize the hard reality that it becomes progressively less just and more counter-productive to attempt to charge a noncustodial parent much more than 33% of his or her adjusted income for ongoing child support. This recognition is reflected in the Rule's reduction of the increased additional support for each child after the third child to a mere 3% of the obligor's adjusted income.

Strict adherence to the support guidelines of Civil Rule 90.3(a) for so many children with the same non-custodial parent and different custodial parents has resulted in a total support obligation far in excess of anything reasonable or collectable, and clearly works an injustice to the children of this order and any child living in Mr. K's household.

The oldest children receive a percentage of Mr. K's adjusted income with no deduction for the other children, under Civil Rule 90.3(a). The second set of children would then receive a percentage of what is left after deductions for older children. The third set of children would have to get by on a percentage of what little that remained. Furthermore, Mr. K's ongoing orders appear to have been set when Mr. K was making significantly more income than he is now. Mr.

¹⁵ Recording of Hearing.

¹⁶ Alaska Civil Rule 90.3(a)(1)

¹⁷ Alaska Civil Rule 90.3(c).

K lives in a remote village where employment opportunities are limited.

Manifest injustice will result if Mr. K's child support is set by continuing to apply Civil Rule 90.3(a) calculations in Mr. K's three different orders. A different approach is required to avoid injustice. Mr. K has limited income to live on and to share with his minor biological eight children that he is providing with some form of financial support. It is clear that normal application of the child support guidelines will not result in a fair or workable distribution of that limited income. The Division is only able to withhold 40% of Mr. K's pay, so his arrears continue to build up. To avoid injustice, all of Mr. K's children should be treated as if they were in one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all minor eight children were one family, with one custodial parent and one support order, Mr. K's obligation would be set at 48% of his adjusted income.

Even this approach will leave Mr. K's household with very little to live on. However, I believe that this is the best approach to use in this case. \$176 is the amount that should be allotted for each of Mr. K's eight minor children he is supporting. I have jurisdiction only over this child support order, but it is to be hoped that Mr. K will be able to seek modifications of his other ongoing order to request that the same or a similar approach be used in modifying his ongoing child support order for that child. As discussed at the hearing, Mr. K should inform their Division caseworker if the custody situation changes from Ms. Q having primary custody of one child.

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.¹⁹ 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.²⁰ The adjusted ongoing monthly amount for the children in this order, \$176, represents material change from the current order of \$319 per month.

Generally, a new monthly child support amount in a modification action should be

¹⁸ Civil Rule 90.3(c)(1)(A).

¹⁹ Alaska Civil Rule 90.3(h)(1).

²⁰ Alaska Civil Rule 90.3, Commentary X.

effective the month after the parties are served with the petition.²¹ The petition was served in January of 2014, so this modification should be made effective February 1, 2014.

IV. Conclusion

Mr. K's ongoing child support obligations should be set at \$176 per child to avoid injustice. This order was set based on a variance under Alaska Civil Rule 90.3(c).

V. Child Support Order

1. Mr. K's modified ongoing child support obligation for his child E is set at a total of \$176 per month, effective February 1, 2014. Adding the additional children, Z or U to this order due to a custody change will result in the addition of \$176 per month per child.
2. All other provisions of the Division's Modified Administrative Child and Medical Support Order, which was issued on February 1, 2014 remain in effect.

DATED this 6th day of June 2014.

By: Signed _____
Mark T. Handley
Administrative Law Judge

²¹ Alaska Regulation 15 AAC 125.321.

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 27th day of June, 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.]