

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

| | | |
|-------------------|---|---------------------|
| In the Matter of: |) | |
| |) | |
| E S. L |) | OAH No. 14-0577-CSS |
| _____ |) | CSSD No. 001044264 |

AMENDED DECISION

I. Introduction

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order, reducing E L’s child support payment from \$309 to \$50 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 Amended Modified Order is affirmed.

II. Facts

Mr. L is the father of five children with C F. T F, born in 1993, is emancipated and not the subject of this decision.¹ On February 15, 2013, Mr. L’s parental rights were terminated for three other minor children.² He no longer has a duty to pay child support for these children. R F, 18 years old and in state custody, is the only child listed on the Amended Modified Administrative Child Support Order, the subject of this appeal.³ R turns 19 in July 2014.⁴

On June 22, 2000, CSSD issued an Administrative Child Support and Medical Support Order, setting Mr. L’s support at \$309 per month.⁵ On January 29, 2014, CSSD initiated a Modification of a Child Support Order because it was notified that Mr. L was incarcerated.⁶ CSSD sent notice to both parents.⁷ On March 13, 2014, CSSD issued an Administrative Child Support and Medical Support Order, setting child support for the three minor children at \$50 per

¹ CSSD’s Pre-Hearing Brief.
² Ex. 6; The order revoked Mr. L’s parental rights for D, O, and E L.
³ Ex. 8; Pendergraft testimony.
⁴ Pre-Hearing Brief.
⁵ Ex. 1.
⁶ Ex. 2. Mr. L has been in jail since January 2013.
⁷ Ex. 3.

child, per month, for a monthly total of \$150.⁸ The minimum child support obligation is \$50 per month.⁹ R was not included on the order.

CSSD issued a Notification of Correction and an Amended Modified Administrative Child Support and Medical Support Order on March 21, 2014.¹⁰ The effective date of the order was February 1, 2014.¹¹ The Amended Modified Order removed the three minor children because Mr. L's parental rights were terminated.¹² R was added to the order, and the total monthly child support obligation was lowered to \$50 per month. The court did not terminate Mr. L's parental rights with regard to R, because R was already 18 years old.¹³ However, because R is in state custody, Mr. L may remain responsible for her child support until she turn 19 years old.¹⁴

An April 2, 2014, Mr. L appealed both the Modified and Amended Modified Orders. His appeal that references the March 13, 2014, Modified Order, which include the three minor children, but not R, states that he lost parental rights for the children and that he does not want any more child support from C F.¹⁵ The appeal form referencing the Amended Modified Order, which only includes R, states that he and C lost their parental rights for R in February 2014.¹⁶ Mr. L again wrote that he no longer wants child support from C.¹⁷

A hearing was held on May 6, 2014. Mr. L testified on his own behalf. Ms. F was unavailable by phone and did not participate. Mr. James Pendergraft represented CSSD.

CSSD explained that it initiated the modification based on Mr. L's incarceration.¹⁸ It issued the amended modification when it learned that Mr. L's parental rights were terminated for the three minor children, but not R, who is still in state custody.¹⁹ Mr. Pendergraft testified

⁸ Ex. 1. Mr. L's previous support obligation was \$309 per month. *See* Ex. 1.

⁹ Civil Rule 90.3(c)(3); 15 Alaska Administrative Code 125.075(d).

¹⁰ Ex. 7; Ex. 8.

¹¹ Ex. 8.

¹² Pendergraft testimony.

¹³ Mr. Pendergraft testified and submitted an affidavit that Mr. L's parental rights were terminated only for E, O, and D, and that R was not on the court order terminating his parental rights to the other children.

¹⁴ Alaska Statute 25.27.061. CSSD relies on 25.27.061 in its child support orders to justify Mr. L's continuing obligation to support R. *See* Ex. 1; Ex. 5; Ex. 8. However, AS 25.27.061 only addresses post-majority child support in cases of continuing high school or equivalent education. This ALJ was unable to locate authority requiring blanket support obligations for a child in state custody. No evidence was presented as to whether R was in school. If R is not in school, Mr. L may not be liable for this support.

¹⁵ Ex. 9, p. 2.

¹⁶ Ex. 9, p. 3.

¹⁷ Ex. 9, p. 3.

¹⁸ Pendergraft testimony.

¹⁹ Pendergraft testimony.

credibly that the Superior Court Orders he reviewed only terminated the parental rights for the three minor children. CSSD explained that Mr. L's support obligation for R would end once R turned 19 in July 2014 and any arrears were satisfied. Mr. L stated that he understood child support obligations end when a child turns 18.

Mr. L expressed concerns that a separate No Name Superior Court proceeding regarding R was supposed to take place in November 2013, but did not occur. The hearing was never rescheduled. Neither the Office of Administrative Hearings nor CSSD had information on the hearing that was slated to occur in November. Mr. L expressed frustration that he continued to receive paperwork from CSSD even though his parental rights were terminated. CSSD explained that Mr. L would continue to receive child support documentation until his obligation, including arrears, was satisfied. Mr. L also stated that he wanted to stop receiving child support payments from C F.²⁰

It was unclear at hearing whether Mr. L wished to challenge modification once it was explained that CSSD was not including the three minor children in the support calculation. Mr. L's appeal stated that his parental rights were terminated for R, but did not assert that at hearing. Mr. L agreed that R was not included in the February 2013 termination order.

III. Discussion

As the person who filed the appeal, Mr. L has the burden of proving by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order was incorrect.²¹

Child support obligations are determined under Civil Rule 90.3.²² Mr. L's support obligation is set at fifty dollars per month, the minimum support payment allowed by Civil Rule 90.3.²³ 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.²⁴ Mr. L has not met that burden.

Once CSSD explained that support continues for children in state custody until they turn 19, Mr. L's argument on appeal was somewhat unclear. He seemed primarily concerned with

²⁰ Mr. Pendergraft explained that he would have to request this through his caseworker. Mr. L did not know the identity of his caseworker. Because Mr. L did not have a writing instrument, Mr. Pendergraft agreed to inform his caseworker that Mr. L wanted to get in touch and would ask the caseworker to contact Mr. L.

²¹ 15 AAC 05.030(h).

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

²³ Alaska R. Civ. Pro. 90.3(a); 15 AAC 125.070.

²⁴ Alaska R. Civ. Pro. 90.3(c); 15 AAC 125.075.

paying off any arrears and getting in touch with his caseworker. CCSSD agreed to direct the caseworker to contact Mr. L.

There is no ongoing support obligation, other than payment of any arrears, for the three minor children, because Mr. L's parental rights were terminated. R is in state custody and will be turning 19 in July of this year. Mr. L's child support obligation, other than arrears, will end no later than when R turns 19. The Amended Modified Order would be in effect from February 1, 2014 through July 2014.

IV. Conclusion

CCSSD correctly modified Mr. L's ongoing child support obligation by removing the three minor children and reducing the support obligation to the minimum required by Civil Rule 90.3(a).

V. Order

1. The Division's Amended Modified Administrative Child Support and Medical Support Order dated March 21, 2014, is affirmed.
2. Mr. L's modified ongoing support for R is set at \$50 per month.

DATED: July 23, 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 16th day of June, 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.]