

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

In the Matter of:)	
)	OAH No. 14-0689-CSS
M R. K)	CSSD No. 001126852
_____)	

CORRECTED DECISION AND ORDER

I. Introduction

M R. K appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 26, 2014. The obligee child is N, 10 years of age. The custodian is B K. O.

The hearing was held on May 22, 2014. All of the parties participated by telephone, including James Pendergraft, Child Support Specialist, for CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. K's child support obligation for N is modified to \$551 per month, effective February 1, 2014.

II. Facts

A. Procedural History

Mr. K's child support obligation for N was set at \$368 per month in 2004.¹ On January 8, 2014, Ms. O requested a modification review.² On January 13, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On March 26, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased his child support to \$597 per month, effective February 1, 2014.⁴ Mr. K appealed on April 25, 2014.⁵

B. Material Facts

Mr. K has been employed by No Name Systems since mid-2011.⁶ In 2013, his earnings from the company were \$43,102.86.⁷ His full-time wages in 2014 are \$19 per hour for a 40-hour

1 Exh. 1.
2 Exh. 3.
3 Exh. 4.
4 Exh. 7.
5 Exh. 8.
6 Exh. 10 at pg. 1.
7 *Id.*

work week.⁸ CSSD used Mr. K's hourly wage to estimate his 2014 income at approximately \$39,520.⁹

Mr. K is married to S. She works at an accounting firm four days per week, and earns approximately \$3,200 per month.¹⁰ They were married in 2009 and have three children in the home, J, 14, M, 10, and O, 9. J is older than N, but it is not clear that J is Mr. K's biological child. Mr. K submitted the birth certificates for these children. The birth certificates for both M and O indicate that K is their last name and Mr. K is their father.¹¹ However, J has a different last name, Z, and his birth certificate does not list a father. Rather, it only lists a mother, S Z, M's and O's mother.¹² Thus, according to the documents Mr. K filed, the record does not establish that J is his biological child.

Mr. K reported regular monthly expenses of \$3,957,¹³ which consists of a mortgage payment of \$1,026; \$600 for food; \$80 for gas; \$64 for trash pickup; \$70 for Internet; \$150 for electricity; \$35 for telephone; \$180 for cable; \$200 for cell phones; \$478 for the payment on a 2007 Chevy Tahoe purchased for \$24,000 in April 2014; \$240 for gasoline; \$67 for vehicle maintenance;¹⁴ \$200 for vehicle insurance; \$37 for homeowner's insurance;¹⁵ \$220 for the payment on a TV and bed purchased from Rent-A-Center; \$80 for haircuts; \$30 for medications; and \$100 for two credit card payments.

Ms. O is a single parent and has two children in the home in addition to N. She is currently laid off from her prior employment at a carpenter's union. Her rent is \$1,175 per month, and her utilities are mostly set through package deals or vary monthly.¹⁶ She drives a 2009 Honda, and has a payment of \$370 per month for it. She pays \$180 per month for car insurance, and has monthly obligations for entertainment and personal care items depending on the needs of the children.¹⁷ Finally, Ms. O has debts for credit cards and student loans of about

⁸ Exh. 11 at pg. 3.

⁹ \$19 x 40 hour per week x 52 weeks = \$39,520.

¹⁰ Exh. A at pg. 1. Mr. K's documents were received on July 7, 2014, after CSSD failed to file them with the OAH. These documents were marked as Exhibit A and incorporated into the record pursuant to a Notice Reopening Record issued on July 8, 2014.

¹¹ Exh. A at pgs. 9, 10.

¹² Exh. A at pg. 11.

¹³ Exh. A at pg. 1.

¹⁴ Mr. K's entry was \$800 for tires in May; this figure was divided by 12 to arrive at the monthly amount.

¹⁵ The entry of \$441 per year was divided by 12 to arrive at the monthly amount.

¹⁶ Ms. O's expenses worksheet, received on June 3, 2014, was marked as Exh. 12.

¹⁷ *Id.*

\$4,000, and an unidentified amount for medical expenses.¹⁸ According to her expenses worksheet, she is paying on these debts.

Prior to the hearing, CSSD prepared a revised child support calculation based on Mr. K's estimated 2014 full-time earnings of \$39,520. The calculation included an additional deduction from income of \$551 per month due to J living in Mr. K's home. That annual income figure, when inserted into CSSD's online child support calculator,¹⁹ yields a child support amount of \$441 per month.²⁰ This is about 19.8% higher than the previous figure of \$368 per month.²¹

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²² If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Mr. K's child support has been \$368 per month since 2004. Thus, a child support calculation of \$423.20 or higher would be sufficient to warrant modification in this case.²³

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.²⁴ In this case, the notice was issued on January 13, 2014, so any modification of Mr. K's child support obligation for N would be effective as of February 1, 2014.²⁵

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.²⁶ Mr. K filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 26, 2014 is incorrect.²⁷

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," minus mandatory deductions such as taxes and Social Security. The rule also states that a parent is entitled to an additional deduction from

18

Id.

19

<http://www.childsupport.alaska.gov/>

20

Exh. 11.

21

$\$441 - \$368 = \$73 \div \$368 = 19.8\%$

22

AS 25.27.190(e).

23

$\$368 \times 1.15 = \423.20

24

15 AAC 125.321(d).

25

See Exh. 4.

26

15 AAC 05.030(h).

27

2 AAC 64.290(e).

income for “in-kind child support for children from prior relationships in the primary or shared physical custody of the parent.”²⁸

Mr. K has a child named J living with him who is older than N. In its initial modification order, CSSD calculated Mr. K’s child support at \$597 per month.²⁹ That calculation did not include the deduction for supporting a prior child in the home. Prior to the hearing, CSSD came to believe that he would be entitled to the prior child deduction, so it prepared a revised calculation which determined his prior child deduction would be \$551 per month.³⁰ When the deduction was factored into the child support calculation, it resulted in a child support amount of \$441 per month.³¹ However, when Mr. K’s birth certificates for the children in his home were obtained, it was revealed that Mr. K is not listed on J’s birth certificate, as he is on those for M and O. The only parent listed on J’s birth certificate is S Z, Mr. K’s wife and mother of all three of these children. It appears from this document that Mr. K is J’s stepparent, not his biological parent.

Therefore, based on the evidence in its entirety, Mr. K has not met his burden of proving that he is J’s biological parent, which would entitle him to the prior child deduction for J. As a result, the prior child deduction should be removed from the child support calculation. Using the income figures CSSD inserted into the initial child support calculation, Mr. K’s support obligation is correctly calculated at \$551 per month.³² It is from this figure that Mr. K’s arguments on appeal are considered.

Mr. K did not challenge the figures CSSD used to calculate his modified child support. Rather, Mr. K essentially argued that it is not fair to increase his child support obligation because he and Ms. O are currently litigating the issue of custody and they have a hearing in September 2014. He asserted that any modification of his child support should wait until the judge in that case issues the ruling on custody.

Mr. K’s argument that his child support should not be modified because custody of N might change in several months is without merit. Since his current income justifies modification, the increase in his support amount should go forward. In the event custody of N is modified in

²⁸ Civil Rule 90.3(a)(1)(D).

²⁹ Exh. 7 at pg. 6.

³⁰ Exh. 11 at pg. 1.

³¹ *Id.*

³² Attachment A. Ironically, this correct child support amount is identical to the prior child deduction CSSD put into the calculation at Exhibit 11. However, this is merely a coincidence; the two figures are not related in any way.

the future and Ms. O no longer has primary custody, Mr. K is entitled to petition for modification of the support order. Until then, his child support should reflect his current income.

Thus, based on the evidence in this appeal, Mr. K's modified child support is now correctly calculated at \$551 per month. The final issue in this appeal is whether he is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). 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 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." It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).

Based on the totality of circumstances, Mr. K's situation does not constitute "unusual circumstances" pursuant to Civil Rule 90.3(c) such that his child support calculated pursuant to the Rule should be lowered. N is entitled to receive child support in an amount based on the obligor's income and calculated under Alaska law. Mr. K's modified child support has been calculated based on his annual income and the calculation generated in this case is correct. Mr. K did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for N were not reduced. His child support obligation should be modified based on the final calculation, as discussed in this decision. No variation from the calculated amount should be considered.

IV. Conclusion

Mr. K met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 26, 2014 is incorrect. His child support obligation for N is correctly calculated at \$551 per month, effective February 1, 2014. He is not entitled to a deduction for paying support for J because Mr. K has not established that J is his biological child. Rather, the evidence appears otherwise. Finally, Mr. K did not prove by clear and convincing evidence that the child support calculation should be varied in order to avoid manifest injustice. The calculated amount of \$551 per month should be adopted. There is no variance granted under the provisions of Civil Rule 90.3(c).

V. Child Support Order

- Mr. K's child support obligation for N is modified to \$551 per month, effective February 1, 2014;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 26, 2014, remain in full force and effect.

DATED this 15th day of August, 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 2nd day of September, 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.]