

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

In the Matter of:	)	
	)	OAH No. 14-0776-CSS
S D. T	)	CSSD No. 001162660
_____	)	

**DECISION AND ORDER**

**I. Introduction**

S D. T appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 21, 2014. The children in this case are N, 7; and A, 5. The other party is K L. L.

The formal hearing was held on July 1, 2014. Both parties participated by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed. Mr. T's child support for N and A is modified to \$433 per month for two children (\$321 for one child), effective March 2014.

**II. Facts**

Mr. T's primary employment is with No Name's in No Name. According to his W-2, he earned \$29,168.60 from the company in 2013.<sup>1</sup> He also has a second job with a company called No Name, Inc., and in addition, he worked for a third company, No Name, Inc., for one quarter in 2013. Mr. T's income from these other jobs totaled \$17,016.01 in 2013, for total income that year of \$46,184.61.<sup>2</sup>

In addition to N and A, Mr. T has an older child named S, who is 10 years of age. Mr. T pays child support for S in the amount of \$437 per month. This order is also administered by CSSD.

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<sup>1</sup> Exh. 7 at pg. 1.

<sup>2</sup> There is a slight discrepancy between the income No Name reported on Mr. T's W-2 and the income No Name reported to the Alaska Department of Labor and Workforce Development. See Exh. 7 at pg. 1 and Exh. 11 at pg. 1. For purposes of this decision, his W-2 income will be used.

Both Mr. T and Ms. L submitted expense worksheets after the hearing. Mr. T has a relatively low level of expenses, at \$1,271 per month,<sup>3</sup> and Ms. L listed her regular expenses at \$2,157 per month.<sup>4</sup> Each party's list of regular household expenses appears to be fairly typical, and neither one of them has any extraordinary expenses. Mr. T has a student loan that he is obligated to repay, but it is not an unusually high amount.

### **III. Discussion**

As the person who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated April 21, 2014 is incorrect.<sup>5</sup>

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." The Commentary to Civil Rule 90.3 indicates that it may be possible for an obligor parent to successfully defend against an upward modification upon proving he or she has taken on additional income for the purpose of providing for a subsequent family.<sup>6</sup>

Mr. T stated he filed the appeal because the child support amount for N and A is too high. It has been \$721 per month since January 2011, as set in a child support decision issued by the OAH after a formal hearing.<sup>7</sup> That decision used all of Mr. T's income in the child support calculation, but it is not known whether the above provision of the Commentary was discussed or ruled upon in Mr. T's 2011 modification. CSSD stated at the hearing that the agency had only used Mr. T's primary income from No Name's in the current child support calculation because he was using the income from his second job to pay off his arrears. The calculation of \$433 per month for two children (\$321 for one child) is correct, using only Mr. T's No Name's income in the calculation.

Mr. T's claim that his child support for N and A is still too high is essentially an argument to have the calculated support amount lowered, or varied. 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 based on

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<sup>3</sup> Exh. 12.

<sup>4</sup> Exh. 13 at pg. 2.

<sup>5</sup> 15 AAC 05.030(h).

<sup>6</sup> Civil Rule 90.3, Commentary VI.B.2.

<sup>7</sup> Exh. 3.

financial hardship, 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.”<sup>8</sup>

Based on all the evidence, Mr. T did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The modification of this child support order has reduced his child support obligation by nearly \$300 per month. In addition, CSSD did not use all of his income in the modification calculation, so he actually has more income from which to pay support, both in this case and for his older child.

An obligor’s burden of proof by “clear and convincing evidence” is a high standard. Mr. T may have to make different lifestyle choices in order to make ends meet. But based on the evidence in its entirety, he did not establish that his child support for N and A should be reduced even further. Therefore, his request for a variance under Civil Rule 90.3(c) based on a financial hardship should be denied.

#### **IV. Conclusion**

Mr. T did not meet his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated April 21, 2014 is incorrect, as required by 15 AAC 05.030(h). CSSD correctly calculated his child support obligation for N and A at \$433 per month for two children (\$321 for one child). Nor did he prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 for N and A were not reduced. Mr. T’s request for a variance under Civil Rule 90.3(c) is denied.

#### **V. Child Support Order**

- The Modified Administrative Child Support and Medical Support Order dated April 21, 2014 is affirmed;
- Mr. T is liable for modified child support for N and A in the amount of \$433 per month for two children (\$321 for one child), effective March 2014.

DATED this 14<sup>th</sup> day of August, 2014.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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<sup>8</sup> Civil Rule 90.3(c).

**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 2<sup>nd</sup> 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.]