

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

In the Matter of)
)
 K R. J)
 _____)

OAH No. 14-0933-CSS
 CSSD No. 001105200

DECISION AND ORDER

I. Introduction

K J appealed a Modified Administrative Child Support and Medical Order (“Modified Support Order”) that the Child Support Services Division (CSSD) issued on January 21, 2014. The Modified Support Order added two additional children to the existing child support order for L, age fifteen. This modification increased Mr. J’s support obligation from \$294.49 per month to \$753 a month. The additional children are M, age twelve, and B, age ten. K J is the obligor parent; the custodial parent is Z A. J.

A hearing was held on June 30, 2014. Mr. J appeared in person while Ms. J appeared telephonically. The Child Support Services Division (CSSD) was represented by Child Support Specialist Russell Crisp, who also appeared telephonically. On August 1, 2014, a supplemental hearing took place to obtain additional evidence, including information about Mr. J’s wages in prior years and Ms. J’s wages and expenses. Both Mr. J and Robert Lewis, who was representing CSSD, appeared telephonically. Ms. J did not appear at the supplemental hearing.¹

Mr. J’s request for a variance under Civil Rule 90.3(c) based on financial hardship is granted. Based on the record and after careful consideration, Mr. J has shown good cause that such a variance is warranted by producing clear and convincing evidence that manifest injustice would result if the support award is not modified.

II. Facts

A. Procedural Background

Mr. J’s child support for one child, L C. J, was set at \$294.49 per month in May of 2001.² After that support order was issued, two additional children were born to the parties – M and B.

¹ Via a message left on her voice mail at the time of the supplemental hearing, Ms. J was notified that the record would be kept open for ten (10) days after the hearing to permit Ms. J to provide a completed hearing expense worksheet. However, Ms. J did not provide any additional documents.

² See Exh. 1, at p. 10.

On December 16, 2013, CSSD initiated a modification review. CSSD issued a Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order (“Petition”) due to a current Medicaid grant.³

After a review of the Petition, CSSD issued a Modified Support Order on January 21, 2014, which added M and B to Mr. J’s existing child support order. The Modified Support Order set Mr. J’s modified ongoing child support at \$753 per month for three children, effective January 1, 2014. In addition, the Modified Order required him to pay an additional \$594.00 in arrears as a result of the services the two additional children had received during the months of November and December of 2013.⁴

On May 16, 2014, Mr. J appealed the modified order, explaining that the increased child support was more than he could afford.⁵

B. Material Facts

Mr. J and Ms. J are the parents of three children. All of the children live with Ms. J.⁶ However, Mr. J has the children three days a week and every other weekend. He also provides transportation both ways for such visits. Ms. J agrees that Mr. J has been a good father and keeps in touch with the children on a regular basis. Mr. J also pays the monthly health insurance premiums for his children, as well as for Ms. J.⁷ Mr. J currently works 40 hours a week.⁸ In the past he has held a second job⁹ and is currently trying to find a second job in order to meet his financial obligations.¹⁰

At the supplemental hearing, Mr. J testified that he transports the children both ways for their visits with him because Ms. J has not been willing to do so.¹¹ Mr. J further testified that he lives alone in a two-bedroom, one bath apartment. He explained that he rented a two-bedroom

³ Exh. 2; Exh. 1, at p. 1.

⁴ Exh. 4, at p. 8.

⁵ Exh. 6.

⁶ Exh. 4, at p. 1.

⁷ Exh. 8, at p. 2. Mr. J pays \$100.00 a month for Ms. J’s health insurance.

⁸ Testimony of Mr. J.

⁹ Exh. 9, at p. 1.

¹⁰ Testimony of Mr. J at the supplemental hearing.

¹¹ Testimony of Mr. J. According to questions posed to Mr. J at the supplemental hearing, Ms. J owns a motor vehicle and, to the best of Mr. J’s knowledge, has a valid drivers’ license. Mr. Lewis, from CSSD, testified that Ms. J is not currently employed. There also were no facts in the record suggesting any impediment to Ms. J’s ability to provide half of the transportation that her daughters need in order for them to see their father three times a week and on alternative weekends.

apartment so that his daughters would have a bedroom of their own when they spend overnights at his home.¹²

Because Ms. J did not attend the supplemental hearing or provide information about her current expenses, there is little information in the record about her financial situation. However, Mr. J, upon questioning, stated that Ms. J is currently living in a house which she shares with her boyfriend/fiancé. Mr. Lewis, on behalf of CSSD, stated that Ms. J had been working at a job which paid \$75,000 a year until she voluntarily quit her job on May 13, 2013¹³ and is not currently employed.¹⁴ Mr. J, when questioned, stated that he was not aware of any reason why Ms. J could not work outside the home.¹⁵

Mr. J earned \$39,646.45 in 2013 from wages.¹⁶ Mr. J pays monthly child support in the amount of \$278.00 for a child from a prior relationship.¹⁷ His adjusted annual income for child support purposes is \$27,378.63,¹⁸ which means that his adjusted income is approximately \$2,228.55 a month.

Mr. J's monthly expenses include: \$925 for rent¹⁹; \$235 for food²⁰; \$65 for electricity, \$60 for internet service; \$35 for cell phone service, \$138 for insurance for his car, \$60 for personal care; \$35 for allergy medication, \$26 a month for a Capital One credit card bill totaling \$921; and \$80 a month for gasoline. These expenses when added together are \$1649 a month. In addition, Mr. J has car payments in the amount of \$301 per month and entertainment expenses in the amount of \$ 60 per month.²¹ Thus, Mr. J's current expenses prior to paying any child support for the children are \$2,010 a month.

Mr. J's child support obligation under the 2001 support order covering just L was \$242.63. The Modified Support Order increased his ongoing support obligation for L and her two siblings, M and B, to \$753 a month. Thus, Mr. J's monthly expenses when the increased

¹² Testimony of Mr. J at the supplemental hearing.

¹³ Exh. 11, at p. 3.

¹⁴ Exh. 11, at pp. 1-2.

¹⁵ Testimony of Mr. J at the supplemental hearing.

¹⁶ Exh. 7, at p. 1.

¹⁷ Exh. 1, at p. 7; Exh. 4, at p. 7.

¹⁸ Exh. 4, at p. 7.

¹⁹ Mr. J at the Supplemental Hearing testified that his monthly rent includes heat.

²⁰ Exh. 6, at p. 2. Mr. J spends \$160 a month in food that is consumed at home and \$75 a month in food consumed outside of the home.

²¹ Mr. J testified that he is trying to trade his 2010 Ford Taurus for a less expensive automobile. He also testified that his entertainment expenses related to renting movies. He does not spend money on alcohol or tobacco.

child support under the Modified Support Order is added into the equation are \$2,763 – *i.e.*, his monthly expenses are approximately \$535 more than his earnings.

III. Discussion

Mr. J claims in his appeal that the calculated child support amount is too high, given his total monthly expenses.²² Both Mr. J and the custodial parent testified that he is a good parent, and Mr. J has stated that he takes pride in taking care of his children.²³

Mr. J generally lives a modest lifestyle²⁴ and is taking laudable steps to reduce some of his monthly expenses by finding a less expensive automobile. Mr. J does not have enough money to pay his bills after his child support payments are made. Moreover, Mr. J's ability to earn significant income from a second job to offset some of his expenses is limited by his participation in parenting his three daughters three evenings each week and on alternate weekends. Consequently, the upward modification of this child support order obviously creates significant stress for Mr. J. In circumstances like these, the imposition of additional child support undoubtedly seems harsh to the obligor.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The obligor parent may obtain a reduction in the amount calculated based on 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."²⁵

"Good cause" under Rule 90.3 may include a finding:

that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children. . . .^{26]}

However, the "good cause" exceptions enumerated in Civil Rule 90.3 for departing from the Rule's formula are not exclusive.²⁷ It is, therefore, appropriate to consider all relevant evidence

²² Exh. 6.

²³ Exh. 6.

²⁴ Exh. 8, at p. 2. Indeed, the only expenses that seemed higher than they needed to be were Mr. J's monthly car payments and his entertainment expenses, which he testified came from renting videos.

²⁵ Civ. R. 90.3(c).

²⁶ See Civil Rule 90.3(c), Commentary VI.A & B.

²⁷ See Coats v. Finn, 779 P.2d 775 (Alaska1989).

to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a). At the same time, Mr. J's primary legal obligation is to support his biological children and this duty takes priority over other debts and obligations.²⁸

Considering the totality of circumstances and, based on the evidence in the record, this case presents "unusual circumstances" as contemplated by Civil Rule 90.3. CSSD's Modified Support Order would place Mr. J's household into a serious monthly deficit situation. Mr. J has a modest lifestyle.²⁹ His ability to reduce his monthly expenses appears to be limited to downsizing to a smaller apartment,³⁰ finding considerably cheaper transportation, borrowing videos from the public library, and finding a part-time job on the days and weekends when he does not have visitation with his children.

Mr. J currently spends approximately \$80 a month in gasoline³¹ in addition to the wear and tear on his vehicle when he transports his children both ways for visitation. This continued contact with his children is a benefit to them³² and also has a monetary benefit to Ms. J, who is relieved of child care duties during that time and the cost of transporting the children to their father's home. Based on all the evidence, Mr. J has proved by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. Therefore, his request for a variance under Civil Rule 90.3(c) based on financial hardship is granted.

Under Civil Rule 90.3, M and B are entitled to receive child support in an amount commensurate with Mr. J's ability to pay. Because the law places such a high burden on a party seeking to depart from the child support guidelines, it is not possible on the present record to justify a large departure from these guidelines. However, a reduction of the support amount to \$603 a month may help make financial solvency an attainable goal for Mr. J, while still substantially increasing the child support for the children. A reduction below \$603 has not been justified by clear and convincing evidence.

²⁸ See Civil Rule 90.3(c), Commentary VI.B.4.

²⁹ See Exh. 8, at p. 2.

³⁰ Mr. J's monthly rent, which includes heat, is very reasonable. Downsizing to a smaller apartment is thus unlikely to yield significant savings.

³¹ Exh. 8, at p. 2.

³² Ms. J testified at the initial hearing that Mr. J was a good parent.

IV. Conclusion

Mr. J has met his burden of proving by clear and convincing evidence that his aggregate child support obligation for L, M, and B should be modified to \$603 a month under Civil Rule 90.3(c).

V. Child Support Order

1. Mr. J is liable for child support in the amount of \$603 per month for three children effective January 1, 2014, and ongoing;

2. Mr. J is also liable for arrears for M and B of \$594 for the months of November and December of 2013; and

2. All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 21, 2014, remain in full force and effect.

DATED this 4th day of September, 2014.

Signed
Kathleen A. Frederick
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 22nd day of September, 2014.

By: Signed
Signature
Kathleen A. Frederick
Name
Administrative Law Judge
Title

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