

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

In the Matter of:	)	
	)	OAH No. 14-1078-CSS
E S. B	)	CSSD No. 001195078
_____	)	

**DECISION AND ORDER**

**I. Introduction**

E B appealed an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division setting his ongoing child support and arrears for his child K. Because Mr. B has not proved that the Division’s calculation of his earnings was in error, the Division’s Order is affirmed.

**II. Facts**

E B and N G are the parents of K B. In 2011 in California, Mr. B and Ms. G signed an agreement that Ms. G would have full custody of K, and that she would not request that Mr. B pay child support.<sup>1</sup> Mr. B subsequently returned to Alaska and Ms. G to Illinois. Mr. B now does not know where K and Ms. G are, and he sincerely wishes he could have contact with K.

Mr. B works as a boat mechanic in No Name. He makes \$25.75 per hour. He pays no union dues and does not pay into a retirement program. The work is seasonal in that he is laid off for the months of October and November, and may or may not have work in December. During the ensuing winter months he works a straight 40-hour week with no overtime. Once tourist season starts, he may be asked to work a considerable amount of overtime. At this time, for example, his employer is down a mechanic, and he is working substantial overtime—his last paycheck showed 63.53 hours of overtime over a two-week period.<sup>2</sup> Yet, he testified that if his employer returns to full staffing, and the boats do not break down, his overtime earnings will plummet, perhaps to zero.

This case began on October 16, 2013, when a sister state, Illinois, requested that Alaska enter a child support order under the Uniform Interstate Family Support Act.<sup>3</sup> Mr. B’s support obligation was initially set at \$956 per month, effective October 1, 2013.<sup>4</sup> He requested an administrative review, which occurred without his participation (the Division was unable to locate him). Based on more accurate actual income information, on June 3, 2014, his ongoing

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<sup>1</sup> Exhibit 3.  
<sup>2</sup> B Exhibit; B testimony.  
<sup>3</sup> Exhibit 1.  
<sup>4</sup> Exhibit 2.

support obligation was adjusted to \$825 per month, and his arrears set at \$7,386.<sup>5</sup> This determination was based on an estimated annual gross income of \$62,307.84, consisting of \$61,407.84 in wages and a \$900 permanent fund dividend.<sup>6</sup>

Mr. B appealed and an in-person hearing was held in No Name on July 21, 2014. The Division was represented by Child Support Specialist James Pendergraft, who appeared telephonically. Numerous attempts to contact Ms. G by telephone were not successful.

### **III. Discussion**

Because Mr. B filed this appeal, he has the burden of proving by a preponderance of the evidence that the agency's modification order was incorrect.<sup>7</sup> Mr. B has raised two arguments. First, that his income is too uncertain to support an award of this size. Second, that the payments are a burden and will work a hardship upon him, especially in winter when he has 2.5 months with no pay, and no overtime pay for the rest of the time.

Under Civil Rule 90.3(a)(1), the child support obligation is to be calculated based on "total income from all sources." Mr. B argues that the income used by the Division is too high. Given the seasonal and uncertain nature of his work—he never knows how much overtime he will receive in summer, nor how many hours he will be allotted in winter—he believes the Division should base his child support obligation on a lower number. In addition, he notes that he did not receive a permanent fund dividend in 2013, and, because he filed late, he will not receive one in 2014.

The evidence in the record, however, does not demonstrate that Mr. B's income in 2014 will be lower than the \$62,307.84 estimated by the Division. Even setting the PFD aside, this estimate is consistent with previous year actual wages—\$61,407.84 in 2013, and \$64,403.89 in 2014.<sup>8</sup> His pay stubs indicate that he has worked considerable overtime so far this year, so there is no reason to think that the total income for the year will not be in the same neighborhood as previous years. Therefore, Mr. B has not met his burden of proving that the Division made an error in calculating his ongoing child support obligation.

With regard to his argument of hardship, Mr. B notes that in winter his income is barely sufficient to pay his rent. He believes that the current child support withholding amount will

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<sup>5</sup> Exhibit 5.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> 15 AAC 05.030(h).

<sup>8</sup> Exhibit 8 at 1.

cause him to lose his apartment, become homeless, and subsequently lose his job. He also notes that he had plans to return to school and pursue a higher-paying white-collar profession.

Although Civil Rule 90.3(c) does allow for a variance from the strict application of the usual child support formula, a variance is allowed only upon “proof by clear and convincing evidence that manifest injustice would result.” The commentary to Civil Rule 90.3 advises that to promote consistency in child support and to avoid a tendency to underestimate the needs of the child, variances under 90.3(c) are reserved for the very unusual case. The commentary explains that agreement among the parties is not a reason to vary the guidelines.<sup>9</sup>

Here, Mr. B’s testimony reveals that he will have to make adjustments to his life in order to provide for his child. He may need to carefully save some of his summertime earnings to meet his own needs and those of his child during winter when his income is reduced.<sup>10</sup> He likely will need to research and understand the consequences with regard to his child support obligation before he undertakes a career change. Although this will be a serious impact to Mr. B, it does not rise to the level of “manifest injustice” that is contemplated by Civil Rule 90.3(c). Therefore, Mr. B has not met his burden of proving by clear and convincing evidence that he is entitled to a variance.

#### **IV. Conclusion**

The Division’s June 8, 2014, Administrative Review Hearing Decision and Amended Administrative Child Support and Medical Support Order, based on the guidelines of Civil Rule 90.3, is affirmed.

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

- The provisions of the June 29, 2014, Amended Administrative Child Support and Medical Support Order remain in effect.

DATED this 23<sup>rd</sup> day of July, 2014.

*Signed* \_\_\_\_\_  
Stephen C. Slotnick  
Administrative Law Judge

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<sup>9</sup> Alaska R. Civ. P. 90.3 Commentary at VI.B.1; *see also* 15 AAC 125.075(b)(1).

<sup>10</sup> For a seasonal employee, the monthly child support obligation may be set at a higher amount during the months when the obligor is employed, if evidence shows that the custodial parent is in a better position to budget than the obligor. Alaska R. Civ. P. 90.3 Commentary at VI.F; *In re T.C.*, OAH No. 13-1858-CSS at 4 (Department of Revenue 2014). Here, although Mr. B was very concerned about his wintertime expenses, he did not testify that he would be unable to budget for future expenses. Indeed, he presented as capable and intelligent. His period of unemployment is not long compared to some seasonal employees. On this record, there is no reason to shift the burden of budgeting to the custodial parent.

## 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 Following Supplemental Hearing 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 8th day of August, 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.]