

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

In the Matter of)

L C)

) OAH No. 15-0195-CSS
) Agency No. 001123934

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order increasing L C’s monthly child support obligation for his son, D, from \$222.00 per month to \$623.00 per month. Mr. C appeals, arguing that the increased amount “is a hardship that [he] cannot afford.”¹ Based on the record as a whole and after careful consideration, Mr. C’s request for a variance under Civil Rule 90.3(c) based on financial hardship is denied.

II. Facts

L C and B G are the parents of twelve-year-old D C. In January 2004, seven months after D’s birth, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. C’s obligation to pay child support for D, and setting the amount of his monthly child support at \$222.00.² Thereafter, Mr. C’s monthly child support payment amount for D remained unchanged for more than ten years.

In December 2014, CSSD initiated an “Electronic Initiated Review Request” to determine whether modification of the child support obligation was warranted, and solicited income records from the parties.³ In response to CSSD’s request for financial information, Mr. C provided income records showing federal taxable wages for 2014 of approximately \$45,000, with take-home pay of \$1,262 per pay period.⁴

Mr. C also provided two letters describing two separate informal agreements under which he was providing funds to support a total of three other children. Mr. C provided an undated letter from Z E, indicating that in November 2014 she and Mr. C had entered into

¹ Ex. 8.
² Ex. 1.
³ Ex. 2.
⁴ Ex. 4.

“an agreement for child support” under which he pays \$200 per month to support X C.⁵ Mr. C also provided a January 30, 2015 letter from K M-C, indicating that he “has been paying child support in the amount of/between \$320-\$400 a month, depending on what he can afford for said month” to support L E. C, Jr. and M M.⁶

On January 29, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Mr. C’s monthly child support obligation for D to \$623.00 per month – a 180.6% increase from his previous monthly support obligation.⁷ The Modified Administrative Child Support and Medical Support Order indicated that the support amount was based on Mr. C’s “total income from all sources based on actual information,” with “credit ... given for union dues he pays and retirement contributions he makes each month.”⁸

Mr. C filed an appeal on February 2, 2015.⁹ Mr. C’s “Appeal of Action” read as follows:

Being that I have three other children that I also support [and] I also have to take care of myself[,] paying 623.00 a month is a hardship that I cannot afford to do. The current amount of 222.00 is what I am able to afford at this point in my life. I only take home 1200 every two weeks. And out of that 1200 I provide money for my other three children for support.¹⁰

A hearing on Mr. C’s appeal was held on April 1, 2015 at the Office of Administrative Hearings.¹¹ Mr. C, the obligor, appeared in person, as did Andrew Rawls on behalf of CSSD. Ms. G, D’s custodian, did not appear for the hearing, and multiple attempts to reach her telephonically were unsuccessful.

Mr. C testified that he has worked in building maintenance at No Name for the past three years, and works forty hours per week. Mr. C testified that his take-home pay was

⁵ Ex. 5, p. 1.

⁶ Ex. 5, p. 2.

⁷ Ex. 7, pp. 4-5. It appears that CSSD issued the Modified Administrative Child Support and Medical Support Order after receiving Mr. C’s income records, but before receiving the letters from Ms. E and Ms. M-C. Those letters, according to the CSSD date stamps, were received one week after CSSD issued the modification. See Ex. 5, p. 1 (2/6/2015 date stamp); Ex. 7 (1/29/15 Modified Administrative Child Support and Medical Support Order).

⁸ Ex. 7, pp. 4, 5. The 2004 Order was calculated based on an annual gross income of \$15,271.55, whereas the 2015 Modification Order is based on Mr. C’s 2014 annual gross income of \$49,034.05. Ex. 1, pp. 4, 8-9 (2004); Ex. 7, p. 6 (2015).

⁹ Ex. 8.

¹⁰ Ex. 8.

¹¹ The hearing was presided over by Administrative Law Judge Kay Howard, who has since retired. However, the undersigned has carefully reviewed the recorded hearing proceedings and administrative record since this matter was reassigned to her.

approximately \$1,200 every two weeks prior to the modification order,¹² but has decreased to between \$900 and \$1,000 every two weeks since the modification.¹³

From his take-home pay, Mr. C sends money to the mothers of his other two children, and lives on the rest. Mr. C has three biological children, of whom D is the eldest. According to his testimony, Mr. C sends X's mother, Ms. E, between \$200 and \$300 per month, and, at the time of the hearing, had done so for the past six months.¹⁴ Additionally, Mr. C recently separated from his wife, Ms. M-C, and, since the separation, has been providing financial support for L Jr. and for his step-daughter, M, whom he indicated he has "raised since birth."¹⁵ However, at the time of the hearing, these payments had been ongoing for only two months. CSSD had also recently opened a separate child support case for L Jr., but had not yet calculated Mr. C's support amount in that case.

Mr. C also testified about his other monthly expenses, indicating that that he spends approximately \$400 per month in rent, \$500 per month for his truck payment,¹⁶ \$150 per month on cellular phone service, \$200 per month on car insurance, and, since vacating his home, \$205 per month on a storage space. He does not pay utilities. He estimated he spends \$250 per month on food, \$80 per month on gas, and, at most, \$100 per month on personal care items. He also spends approximately \$400 annually on clothing for his children. Mr. C has no credit card or installment debt other than his car payment, and he obtains health care through the veteran's administration. However, he has \$1,500 in medical bills currently in collections. He also indicated that he is currently behind on his truck payments, as he has been unable to keep up those payments with the larger support award.

Mr. C testified that the amount in the modification order is more than he can afford to pay. He indicated that he had to move out of his home and move in with his mother. However, he also testified that he moved out of his home on January 1, 2015, which was prior to the modification order being issued. Mr. C also testified that he has been borrowing

¹² Exhibit 4 shows that Mr. C's take-home pay was \$1,262 per pay period, and slightly more when he worked overtime.

¹³ Mr. C did not provide pay stubs showing the exact amount of take-home pay post-modification.

¹⁴ As noted above, Mr. C also provided a letter from Ms. E supporting this claim. See Ex. 5, p. 1.

¹⁵ L C testimony and Ex. 5, p. 2. Mr. C testified that he and Ms. M have also had prior periods of separation, but remain married.

¹⁶ Mr. C owns a 2006 Chevy Tahoe on which he owes \$17,000, but is behind on his monthly payments. He testified that he also owns a car, which he gave to his wife, who is making the payments on that vehicle.

money out of his retirement account to make ends meet. Mr. C conceded that the support amount for D should increase, but feels that the \$623.00 is more than he can afford while supporting his other children.

III. Discussion

A. Overview of Applicable Law

A parent is obligated both by statute and at common law to support his or her children.¹⁷ Alaska 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. Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ 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.¹⁹

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures, as here,²⁰ 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.²¹ 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."²² 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).²³

A parent challenging child support calculations under Rule 90.3 has the burden of proving by a preponderance of the evidence that the department's support calculations are incorrect.²⁴ However, where the basis of the appeal is, as here, that the Rule 90.3

¹⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ AS 25.27.190(e).

¹⁹ Mr. C's child support has been \$222.00 per month since January 2004. Under Rule 90.3(h), a child support calculation of \$255.30 or more would be sufficient to warrant modification in this case.

²⁰ See Ex. 7, p. 5.

²¹ Civil Rule 90.3(c).

²² Civil Rule 90.3(c).

²³ See Civil Rule 90.3, Commentary VI.E.1.

²⁴ 15 AAC 05.030(h); 2 AAC 64.290(e).

modification amount constitutes a substantial hardship, the parent must prove hardship by clear and convincing evidence.²⁵

B. Analysis

Mr. C objects to the increased support amount in the January 2015 Modified Administrative Child Support and Medical Support Order because, he claims, it fails to take into account support he pays for his other children. As noted above, Mr. C produced evidence that he provides money monthly to the mothers of his other children – X and L Jr. – for their support.²⁶ Because his other children are both younger than D, however, Rule 90.3 does not allow Mr. C to deduct support he provides for them in calculating his support obligation for D.²⁷

The question under Rule 90.3 then becomes whether the increased support amount for D constitutes a “substantial hardship” under the facts of Mr. C’s case. This is a very high burden to satisfy. An obligor parent may obtain a reduction in the calculated amount based on financial hardship, but only if he or she shows that “good cause” exists for the reduction. 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.”²⁸ Civil Rule 90.3 allows a reduction in support amount based on subsequent children only if those subsequent children would suffer a “substantial hardship” in the absence of a reduction.²⁹

Based on all the evidence, Mr. C did not prove by clear and convincing evidence that manifest injustice would result if his support obligation for D were not reduced. Mr. C presented no evidence relating to the circumstances of his younger children or, specifically, addressing whether lowering his monthly support obligation to D was required to prevent “substantial hardship” to X or L Jr.

The upward modification of this child support order has undoubtedly created stress for Mr. C, especially given that he provides financial support for his two younger children, as well as for a step-child. But, as a matter of law, Mr. C’s obligation to support his oldest child, D, takes precedence over other obligations, including obligations to his later-born

²⁵ Civil Rule 90.3(c)(1).

²⁶ C testimony and Ex. 5.

²⁷ Civil Rule 90.3, Commentary VI.B.2. While Mr. C’s testimony and Ms. M-C’s letter also indicate that Mr. C is supporting his stepdaughter, M, Rule 90.3 likewise does not allow deductions for the cost of support for stepchildren.

²⁸ Civil Rule 90.3(c); Rule 90.3 Commentary VI.A.

²⁹ See Civil Rule 90.3, Commentary VI.B.2.

children.³⁰ D is entitled to receive support in an amount commensurate with Mr. C's ability to pay, as calculated pursuant to Civil Rule 90.3.³¹ The law presumes that the Rule 90.3 calculation should apply in the vast majority of circumstances, and should only be departed from where unusual circumstance make application of the its formula manifestly unjust.³²

The evidence here did not rise to the level required to justify departure from the Rule 90.3 calculation. There is no doubt that the increased support award has been challenging for Mr. C. He testified that he has made budgeting adjustments – such as moving in with family members – to meet his support obligations. Other adjustments – such as replacing his truck with a less expensive vehicle or otherwise finding a way to lower his monthly vehicle payments – may be required as well. Rule 90.3 also permits an obligor parent to supplement his or her income with a second job for purposes of supporting subsequent children, without that additional income warranting an upward modification to the older child's support order.³³ While these may not be Mr. C's preferred options, they are reasonable choices available to him to satisfy his legal obligation to support D. As such, his situation, while challenging, does not present such “unusual circumstances” that an adjustment to the Rule 90.3 calculation is required.

IV. Conclusion

Mr. C did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Rule 90.3 for D were not reduced. Accordingly, his request for a hardship variance is denied. However, this order does not preclude Mr. C from seeking a hardship variance in the future in this or any other child support case he may have.

V. Child Support Order

1. L C is liable for child support in the amount of \$623.00 per month for D, effective January 1, 2015, and ongoing.

³⁰ As acknowledged at the hearing, CSSD's child support calculation for L Jr. will take into account the amount of support Mr. C is paying for D. See Civil Rule 90.3(a)(1)(C). Mr. C can also request CSSD to consider his payments in support of X in calculating his support for L, Jr.

³¹ Of note, Mr. C testified that he has held his current job for three years. Yet his support obligation for D has remained unchanged since 2004. It appears likely, then, that Mr. C has for several years been paying significantly less in support for D than Rule 90.3 contemplates.

³² Rule 90.3, Commentary VI.B.

³³ Rule 90.3, Commentary, Section VI(B)(2).

2. All other terms of the Modified Administrative Child Support and Medical Support Order dated January 29, 2015 remain in full force and effect.

Dated: July 6, 2015

Signed
Cheryl Mandala
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 within 30 days after the date of this decision.

DATED this 22nd day of July, 2015.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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