

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

| | | |
|------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| N Z |) | OAH No. 15-0665-CSS |
| _____ |) | Agency No. 001186037 |

DECISION AND ORDER

I. Introduction

N Z and L D are the parents of ten-year-old J Z, who lives with her mother in Wisconsin. In April 2015, the State of Alaska Child Support Services Division (CSSD) issued an order increasing Mr. Z’s monthly child support obligation for J from \$290.00 per month to \$647.00 per month. Mr. Z appeals, arguing that this higher amount poses an undue hardship. But Mr. Z did not meet his substantial burden of proof required for a hardship variance under Alaska Civil Rule 90.3. Accordingly, based on the record and after careful consideration, the April 29, 2015 Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. Material Facts

N Z and L D¹ are the biological parents of ten-year-old J.² Mr. Z lives in Anchorage with his fiancée, O, and their three children, ages 3, 4, and 5.³ They are expecting another child in August 2015.⁴

Mr. Z and his fiancée both work full time and together earn just under \$100,000 annually.⁵ They share household expenses and the costs of supporting the children in their home.⁶ Mr. Z described those monthly expenses as including a mortgage payment (\$1,880), a loan payment for a 2015 Toyota Tundra truck⁷ (\$585.74); car insurance (\$100); electric

¹ Ms. D changed her name from L M to L L D. Accordingly, while the exhibits in the record refer to her as Ms. M, this decision will refer to her as Ms. D.

² Ex. 2, p. 2.

³ Testimony of Mr. Z.

⁴ Testimony of Mr. Z; Ex. 5, p. 2.

⁵ Testimony of Mr. Z. Mr. Z earns approximately \$47,500 per year, and O earns approximately \$50,000 per year. Testimony of Mr. Z; Ex. 6, p. 1.

⁶ Testimony of Mr. Z.

⁷ Mr. Z also owns another, much older truck, which does not run, as well as an All-Terrain Vehicle.

bill (\$200); cable TV (\$103); internet (\$160); natural gas (varying seasonally between \$100 and \$400); and health insurance for all children, including J (\$147).⁸

Mr. Z also testified that the household spends approximately \$450 per month on groceries, between \$200 and \$300 each month on clothing for the children, and \$120 per month on tobacco products. Mr. Z indicates he spends \$200 per month on credit card debt. Lastly, Mr. Z testified that he carries life insurance on himself and on all of his children, at a cost of \$400 per month.⁹

The children in Mr. Z's home are not in daycare. Mr. Z testified that they pulled the children out of day care due to cost, and that his relatives now watch the children.¹⁰ Mr. Z did not indicate whether he pays the relatives for this assistance.

J lives in Wisconsin with Ms. D and a half-brother.¹¹ Ms. D works full-time and is a single parent. She earns approximately \$25,000 per year. She rents her home, paying \$500 per month. She cannot afford to pay for day care for the summer, so she pays relatives to watch her children while she works.¹²

B. Procedural History

Mr. Z was served with the initial Administrative Child Support Order in this matter on March 12, 2013.¹³ At that time, CSSD set Mr. Z's monthly child support obligation for J at \$290 per month. Based on a total gross income of \$19,229.25, and after accounting for allowable deductions, CSSD established Mr. Z's monthly child support payment at \$290.¹⁴

In March 2015, CSSD received through Wisconsin Child Support Services a request from Ms. D to modify Mr. Z's child support obligation.¹⁵ CSSD served both parties with a Notice of Petition for Modification on March 27, 2015.¹⁶ CSSD did not receive any

⁸ Testimony of Mr. Z.

⁹ Testimony of Mr. Z.

¹⁰ Testimony of Mr. Z.

¹¹ Testimony of Ms. D.

¹² Testimony of Ms. D.

¹³ Ex. 1, p. 14.

¹⁴ Ex. 1, p. 8. Specifically, CSSD calculated Mr. Z's support obligation using annual wages of \$12,461.25 per year as reported by Mr. Z's employer to the Department of Labor, and an additional \$6,768.00 in unemployment insurance benefits. Ex. 1, p. 4.

¹⁵ Ex. 2.

¹⁶ Ex. 3.

financial information from Mr. Z. Accordingly, CSSD’s modification relied on wage information reported to CSSD by Mr. Z’s employer.¹⁷

The Child Support Guidelines Affidavit supporting the modification listed Mr. Z’s annual gross income as \$47,748.00. After accounting for allowable deductions, the adjusted annual income was \$38,814.36. The monthly child support payment for one child was then set, pursuant to Alaska Civil Rule 90.3, at \$647.00.¹⁸

Mr. Z appealed the modification, arguing that the higher child support payment “is making it harder to make ends meet and provide for my family of 5.”¹⁹ Mr. Z noted that he had three children living in his home, with another baby due in August, and wrote in his Appeal of Action by CSSD that he “cannot afford the deduction.”²⁰

III. Discussion

A. Mr. Z’s Request for a Hardship Exemption

A parent is obligated both by statute and at common law to support his or her children.²¹ 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. Here, Mr. Z does not dispute the size of his income as reflected in the Division’s Child Support Guidelines worksheet,²² and is not otherwise contesting the Division’s calculations under Rule 90.3. Instead, Mr. Z claims that he cannot afford the support amount calculated by CSSD, and asks that the support amount be lowered on the basis of financial hardship.

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.”²³ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee

¹⁷ See Ex. 4, pp. 4-5.

¹⁸ Ex. 4, p. 6.

¹⁹ Ex. 5, p. 2.

²⁰ Ex. 5, p. 2.

²¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²² Ex. 4, p. 6.

²³ Civil Rule 90.3(c).

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).²⁴

Based on all the evidence, Mr. Z did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. The evidence in the record establishes that Ms. D's household has significantly fewer resources than Mr. Z's. While Mr. Z has a larger family, the combined annual income of Mr. Z and his fiancée is four times Ms. D's annual income, on which she alone supports J and another child.

It is also worth noting that Mr. Z's monthly support obligation for J appears to have been set lower than it should have been for quite some time. The evidence presented by the Division includes Mr. Z's reported quarterly and annual wages since 2012.²⁵ Although the 2012 Order based Mr. Z's monthly child support obligation on an annual income of \$12,000, the Department of Labor figures show that Mr. Z ultimately earned \$33,000 that year.²⁶ Further, Mr. Z's annual income was \$47,532.72 in 2013, and \$47,669.02 in 2014.²⁷ For all three of those years – 2012, 2013, and 2014 – Mr. Z paid child support that was calculated based on an annual income of \$12,000.²⁸ In short, Mr. Z has for years been paying significantly less in child support for J than Rule 90.3 contemplates.

Mr. Z also has discretionary expenditures that cannot take precedence over his obligation to support J. According to Mr. Z's testimony, the amount of money in his updated support obligation is less than he spends monthly on truck payments and tobacco products. Mr. Z also described spending \$200-\$300 per month on children's clothing, as well as \$400 per month on life insurance. Each of these expenditures weighs against a finding of hardship.

Further, certain items of expenses identified by Mr. Z at the hearing are either overstated or can be reduced. For example, as previously noted, he listed monthly expenses of \$200-300 in children's clothing for three young children fewer than three years apart

²⁴ See Civil Rule 90.3, Commentary VI.E.1.

²⁵ Ex. 6.

²⁶ Ex. 6, p. 1.

²⁷ Ex. 6, p. 1.

²⁸ Ex. 1.

from one another. This amount is excessive, and while Mr. Z was a sincere witness, this particular item of testimony was not persuasive.²⁹

Likewise, Mr. Z also indicated that he spends \$400 per month on life insurance for himself and his children. Either his testimony significantly overstated the amount of insurance premiums actually paid, or this particular expenditure is one that may not be compatible with Mr. Z's overall financial situation at the present.

The increase in his monthly child support obligation has undoubtedly created financial stress for Mr. Z. However, his duty to J takes priority over other debts and obligations he may have assumed later, including taking priority over obligations to his subsequent children.³⁰ Mr. Z will be able to meet his increased child support obligation through streamlining some of the household expenditures described above. Mr. Z may have to make lifestyle changes, such as replacing his 2015 truck with a more economical model or selling his ATV, in order to meet his adjusted child support obligation. But Mr. Z did not prove by clear and convincing evidence that increasing his child support by \$357 per month would result in "manifest injustice."

J is entitled to receive child support in an amount based on Mr. Z's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been correctly determined under the rule, and the evidence presented was insufficient to show good cause to reduce that amount.

B. Mr. Z's Request for a Health Care Credit

Mr. Z also raised the issue of health insurance premiums paid on J's behalf. Mr. Z testified that he provides health insurance for J.³¹ The record also suggests that J may be covered on Ms. D's health insurance.³² This matter is being referred to the parties' caseworker at CSSD.

²⁹ Were it the case that Mr. Z actually *is* spending that much per month on clothing for three children ages 3 to 5, which the undersigned doubts, this expenditure would weigh strongly against any hardship finding, and would instead suggest that J is impermissibly being made to subsidize fairly extravagant lifestyle choices for her younger half-siblings. Either way, this testimony did not support a finding of hardship.

³⁰ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998); 15 AAC 125.075(a)(2); See Civil Rule 90.3, Commentary VI.B.2. Subsequent children are not considered for purposes of calculating child support unless the Obligor can establish that failure to vary the child support will cause a substantial hardship to the subsequent children.

³¹ Testimony of Mr. Z.

³² Ex. 2, p. 5.

The Medical Support portion of the Modified Administrative Child Support Order requires the purchase of medical insurance when it is available at a reasonable cost.³³ The procedure set out in the order allows each parent to provide proof of insurance and the cost of that insurance. The order then directs CSSD to provide appropriate credits and debits based on the cost of insurance.³⁴ CSSD has the authority to administratively change the credit or debit amount as the cost of insurance changes, without issuing a new order.³⁵ The current amount of any credit or debit is not set in this child support decision, but CSSD will be making the proper adjustment to Mr. Z's child support amount once it has proof of the insurance coverage for J and the amount that is paid for it.

IV. Conclusion

Mr. Z did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. He is thus not entitled to a variance from the amount calculated. Mr. Z's child support is correctly calculated at \$647 per month, effective April 1, 2015, and ongoing. This figure should be adopted.

V. Child Support Order

1. N Z is liable for child support for J in the amount of \$647.00 per month effective April 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated April 29, 2015 remain in full force and effect.

Dated: June 30, 2015

Signed

Cheryl Mandala
Administrative Law Judge

³³ Ex. 4 at pp. 2-3 (section II.A.1 of the Order).

³⁴ Ex. 4 at Section II.B & C of the Order.

³⁵ Ex. 4 at Section II.D of the Order.

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 14th day of July, 2015.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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