

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

In the Matter of)	
)	
N D)	OAH No. 15-0668-CSS
_____)	Agency No. 001202821

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) initially entered an Administrative Child Support and Medical Support Order establishing the monthly support obligation of N D for his son, K, at \$406.00 per month, but then reduced the amount to \$339.00 after an administrative review. S C, the custodian, appeals the reduction. Mr. D, in turn, claims that the support amount is too high, and will cause him substantial hardship. Based on the record as a whole and after careful consideration, this decision concludes that Mr. D’s monthly child support obligation is properly set at \$339.00 per month. Mr. D’s request for a hardship exemption is denied.

II. Facts

S C and N D are the parents of nine-month-old K C. K lives with Ms. C. The Child Support Services Division (CSSD) initiated child support enforcement proceedings for K after Ms. C applied for Temporary Aid for Needy Families (TANF).

On March 3, 2015, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. D’s monthly child support obligation for K at \$406 per month. The order reflects that the monthly support amount was calculated based on Mr. D’s “total income from all sources.”¹ A notation at the bottom of the Child Support Guidelines Worksheet attached to the Order indicates that the income amount was calculated “based on 2014 wages earned and Alaska PFD.”² After allowable deductions for taxes and unemployment insurance, Mr. D’s “adjusted annual income” was determined to be \$24,341.71, of which \$4,868.34 was deemed “annual income available for child support” for

¹ Ex. 5, p. 4.
² Ex. 5, p. 8.

one child.³ Based on that amount, and using the formula set out in Alaska Civil Rule 90.3, Mr. D's monthly child support payment for K was calculated at \$406.00 per month.⁴

Mr. D requested an administrative review of the March 2015 support order, contending that the monthly support amount was too high in light of his financial circumstances.⁵ Mr. D included with his request various financial documents, including a lease agreement, student loan statements, and bank statements.⁶

CSSD held an administrative review on April 28, 2015, with both Ms. C and Mr. D participating by phone.⁷ At that time, Mr. D reported having been unemployed for two months of 2015, but that he had since obtained employment at a rate of \$10.50 per hour.⁸

On May 2, 2015, CSSD issued an Amended Child Support and Medical Support Order setting Mr. D's ongoing support obligation at \$339.00 per month, effective June 1, 2015, and setting his child support arrears for October 2014 - May 2015 based on a support amount of \$379.00 per month.⁹

CSSD included two separate Child Support Guidelines Worksheets with the Amended Order. The first calculated Mr. D's 2014 annual gross income and associated support obligation based on "2014 Alaska Department of Labor Data."¹⁰ Based on annual wages of \$27,051.48, and after allowable deductions for taxes and unemployment insurance, Mr. D's "adjusted annual income" was calculated to be \$22,732.80, of which \$4,546.56 was deemed "annual income available for child support" for one child.¹¹ Based on that amount, Mr. D's monthly child support obligation under the Rule 90.3 formula was \$379.00 per month¹² – the amount CSSD then applied to Mr. D's monthly child support arrears.¹³

A second worksheet was prepared calculating Mr. D's annual gross income and associated support obligation based on his then-current wage of \$10.50 per hour.¹⁴ With a

³ Ex. 5, p. 8.

⁴ Ex. 5, p. 8.

⁵ Ex. 6.

⁶ See Ex. 6.

⁷ CSSD position statement, p. 1; Ex. 7.

⁸ CSSD position statement, p. 1; Ex. 7.

⁹ Ex. 7, p. 3.

¹⁰ Ex. 7, p. 9.

¹¹ Ex. 7, p. 9. Mr. D was ineligible for a PFD in 2014. Accordingly, the PFD was removed from the calculation that had been used in the March Order. See Ex. 7, p. 7.

¹² Ex. 7, p. 9.

¹³ Ex. 7, p. 3.

¹⁴ Ex. 7, p. 10.

projected annual wages of \$21,840.00, plus the PFD, and after allowable deductions, Mr. D's "adjusted annual income" under this model was determined to be \$20,343.00, of which \$4,068.60 was deemed "annual income available for child support" for one child.¹⁵ Based on that amount, his monthly child support payment for K was calculated at \$339.00 per month.¹⁶ CSSD applied this second calculation to Mr. D's prospective monthly support obligation for K, and set that obligation at \$339.00 per month, effective June 1, 2015.¹⁷

Ms. C filed a Notice of Appeal on May 21, 2015.¹⁸ A hearing was held on June 30, 2015. Mr. D and Ms. C participated telephonically; CSSD was represented by Andrew Rawls, who appeared in person.

In her request for an administrative hearing, Ms. C wrote that Mr. D had obtained a new job and was now earning \$16.00 per hour.¹⁹ At the hearing, Ms. C clarified that she was opposing the downward adjustment from the March 2015 Order to the May 2015 Amended Order, as opposed to simply seeking a modification going forward. Mr. D, in turn, asserted that even the reduced support amount in the May 2015 Amended Order was a hardship.

Mr. D testified that prior to mid-May 2015 he worked at No Name Company, earning \$10.50 per hour. In mid-May 2015 he began working at No Name 2 Company. At No Name 2, Mr. D earns \$16.00 per hour, but his work schedule varies depending on the weather. Mr. D testified that his two most recent weekly paychecks had been only \$300 each after child support was deducted.²⁰

Mr. D also explained that the No Name 2 job is seasonal, and will end when the No Name season ends. Mr. D indicated that, when winter arrives, he will be "unemployed and looking for another job." Mr. D was unable to provide even an educated guess of his likely

¹⁵ Ex. 7, p. 10.

¹⁶ Ex. 7, p. 10.

¹⁷ Ex. 7, p. 3. The Amended Order notes that all arrears, including those for 2015, were based on reported earnings for 2014. "The monthly amount of arrears amount (sic) for 2015 remains the same as that calculated for 2014 because the monthly amount calculated is less than a 15 percent change and is not a material change in circumstances." *Id.*, citing 15 AAC 125.105(e). Neither party appealed this finding.

¹⁸ Ex. 8.

¹⁹ Ex. 8.

²⁰ Following the hearing, Mr. D submitted four weekly paychecks covering the weeks of May 25 through June 21. During this four-week period, Mr. D's gross income from No Name 2 was \$2,378.00, he had \$486.68 withheld for child support, he worked an average of 35.56 hours per week, and his net income after all deductions was \$1,401.13. Ex. 11. Additionally, the June 21, 2015 paystub indicated that his year-to-date gross wages from No Name 2 at that time were \$4,346.00, with year-to-date child support withholding of \$608.35. Ex. 11, p. 2.

annual income for 2015, but noted that he had been unemployed for 2-2 ½ months earlier in the year.

Because the issue of hardship was raised, both parties testified about their living situations and expenses. Mr. D lives with his girlfriend, who is expecting their child.²¹ She is employed and earns approximately \$10.00 per hour. Ms. C is single, lives alone with K, and runs an in-home day care. Her monthly income is more than Mr. D's, but her monthly expenses include added monthly expenses relating to caring for an infant, such as infant formula, diapers and wipes. Ms. C pays more in rent and electricity than do Mr. D and his girlfriend. Mr. D, who purchased a truck in February 2015, has a monthly car payment, as does his girlfriend, while Ms. C's 1999 Ford Explorer is paid off.²² As described at the hearing, the parties' monthly expenses were otherwise fairly similar.

Following the hearing, the record was held open for Mr. D to submit additional recent pay stubs to CSSD, and for CSSD to submit any proposed revised child support calculations or other material for consideration.²³

III. Discussion

A. Overview of Applicable Law

A parent is obligated both by statute and at common law to support his or her children.²⁴ Child support obligations are determined under Alaska Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."²⁵ 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. Determining an obligor's annual income for purposes of calculating ongoing child support is "necessarily...speculative because the relevant income figure is expected future income."²⁶

²¹ Mr. D also has a child in Oklahoma for whom he provides no child support.

²² Mr. D also has other loans, including student loans, totaling about \$12,000, on which he currently pays \$100 per month. At least one loan is in deferment status.

²³ CSSD was also directed to submit an updated summary of Mr. D's employer-reported earnings as provided by the Department of Labor, but as of the record closure date no updated data was available from the Department of Labor.

²⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁵ Civil Rule 90.3, Commentary I.B.

²⁶ See Civil Rule 90.3, Commentary III.E.

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.²⁷ A parent seeking a hardship exemption to Rule 90.3 calculations must show by clear and convincing evidence that applying the calculation under the circumstances will cause manifest injustice.

B. Monthly Support Amount

As the party appealing the reduced monthly support amount, Ms. C has the burden to show that the amount is incorrect. Ms. C has not met that burden. Mr. D testified that although his current hourly wage is higher than it was at the time of the Administrative Review, his hours are variable, and the No Name 2 job is seasonal. Ms. C did not meet her burden of showing either that the monthly support amount was incorrectly calculated, or that Mr. D's ability to pay is greater than the amount established in the May 2015 Order. Given the temporary nature of the No Name 2 job and the variability in Mr. D's earnings, Ms. C did not meet her burden of showing that Mr. D's ability to pay is materially different from what is set out in the May 2015 Order.²⁸

C. Mr. D's Request for a Hardship Exemption

A parent may obtain a reduction in a Rule 90.3 support obligation 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" or that "unusual circumstances make application of the formula unjust."²⁹ 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).³⁰

Mr. D contends the monthly support amount constitutes a hardship given the variability of his income. When he works fewer hours, he explained, the withdrawals from his paycheck leave him with few resources to pay his bills. While the situation he described undoubtedly creates financial pressures for Mr. D, he did not meet his high burden of showing that "manifest injustice would result" if the monthly support amount were not

²⁷ 15 AAC 05.030(h); 2 AAC 64.290(e).

²⁸ Nothing about this order precludes either party from requesting a modification review of the May 2015 Amended Order in the future should circumstances warrant.

²⁹ Civil Rule 90.3(c).

³⁰ See Civil Rule 90.3, Commentary VI.E.1.

lowered. Nor does this situation, while no doubt challenging, constitute such an exceptionally “unusual circumstance” as to permit a variance from Rule 90.3

The law provides that Mr. D’s duty to support K takes precedence over virtually all other financial obligations, and certainly over lifestyle choices, including, for example, money spent on cigarettes, cable TV, cell phones and a recently-purchased late-model car. While Mr. D is clearly stretched thin financially, his remedy under these facts is not a reduction in his monthly support obligation to K. The law presumes that the Rule 90.3 calculation will apply in the vast majority of situations,³¹ and Mr. D did not meet his high burden of establishing an entitlement to an exception from the obligations of that Rule.

IV. Conclusion

Ms. C did not meet her burden of showing either error in the May 2015 Amended Order, or that Mr. D’s ability to pay is substantially different than it was when that Order was entered. Accordingly, the May 2015 Amended Order is affirmed. Mr. D’s request for a hardship variance is denied.

V. Child Support Order

1. N D is liable for child support in the amount of \$339.00 per month for one child, effective June 1, 2015 and ongoing.
2. All other terms of the Amended Administrative Child Support and Medical Support Order dated May 2, 2015 remain in full force and effect.

Dated: August 3, 2015

Signed

Cheryl Mandala
Administrative Law Judge

³¹ See Civil Rule 90.3, Commentary VI.A.

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 18th day of August, 2015.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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