

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

In the Matter of)	
)	
T K. E)	OAH No. 15-1127-CSS
_____)	Agency No. 001186927

CORRECTED DECISION AND ORDER *Nunc Pro Tunc*¹

I. Introduction

T E appeals an August 2015 Modified Administrative Child Support and Medical Support Order that increased his monthly child support payment for his daughter, R, from \$293.00 per month to \$459.00 per month. After a full hearing and in light of all the evidence in the record, the August 2015 Order is affirmed.

II. Facts

T E and S E are the parents of ten-year-old R, who lives with Ms. E but regularly spends time with Mr. E at his home.²

Mr. E’s child support obligation for R was originally established in October 2012.³ At that time, CSSD issued an Administrative Child Support and Medical Support Order setting Mr. E’s ongoing child support for R at \$293.00 per month.⁴ This amount was based on Mr. E’s four most recent quarters of earned wages as reported to the Alaska Department of Labor and Workforce Development, as well as the amount of the 2012 Permanent Fund Dividend.⁵

In June 2015, CSSD notified the parties of an “electronic initiated review request,” noting that “[i]t appears there may be enough of a change in the payor’s income to justify modification of the monthly child support obligation.”⁶ Mr. E responded to the review notification by requesting that CSSD conduct a modification review, and also provided

¹ Pursuant to 2 AAC 64.350(a), this Decision has been corrected by the final decisionmaker to correct a typographical error in the Order.

² Mr. E’s home includes a bedroom for R, but she does not actually spend the night there.

³ Ex. 1.

⁴ Ex. 1.

⁵ Ex. 1, p. 8. The total gross income used to calculate Mr. E’s support amount in 2012 was \$19,062.44. Ex. 1, p. 8.

⁶ Ex. 2. The notice also expressly advised that “[t]he modification review may result in increase or a decrease in the current support obligation.” *Id.*

paystubs to CSSD.⁷ CSSD recalculated Mr. E's support order based on that updated information.

On August 12, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Mr. E's monthly support obligation from \$293.00 per month to \$459.00 per month, effective July 1, 2015.⁸

Mr. E filed a timely appeal.⁹ A hearing was held on September 17, 2015. Mr. E appeared in person, as did Delinda Cain, who represented CSSD. Ms. E appeared by telephone. Both parents testified. Because Ms. E had not received Mr. E's exhibits prior to the hearing, they were sent to her via email immediately after the hearing, and the hearing record was then held open until September 25, 2015 to allow any party to submit further evidence or argument. The record closed without further submissions by any party.

It is undisputed that Mr. E has regular contact and interaction with his daughter. Although she does not sleep at his home, she spends time there and has her own bedroom. Mr. E has provided her with a cell phone, pays for her food when they spend time together, and also pays for some of her extracurricular activities.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Alaska Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

Under Rule 90.3, the amount of child support received by a child is based on the parent's ability to pay.¹¹ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions such as taxes, certain retirement contributions, support for a prior biological child living in the home, 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

⁷ Ex. 2, 3.

⁸ Ex. 5, Ex. 6.

⁹ Mr. E's appeal request was not marked as an exhibit, but is in the record.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ Alaska Civil Rule 90.3, Commentary I B.

income.”¹² However, child support determinations calculated under Civil Rule 90.3(a) from a parent’s actual income are presumed to be correct.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹³ 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. Mr. E’s monthly child support obligation under the October 2012 Administrative Child Support and Medical Support Order was \$293.00 per month. Under Rule 90.3(h), a newly-calculated monthly child support obligation greater than \$337.00 would be sufficient to warrant modification in this case.¹⁴

As the party appealing the increased monthly support amount, Mr. E has the burden to show that the amount is incorrect. Mr. E has not met that burden. At the hearing, Mr. E could not identify any errors in the Division’s support calculation. And Mr. E expressly indicated that he was not claiming a hardship exemption under Rule 90.3(c). Rather, Mr. E’s objection to the support amount is a challenge to the policy underlying Rule 90.3.

Mr. E is a parent who regularly spends quality time with R. In Mr. E’s view, the monthly child support obligation should be lower for obligors like him, who are deeply involved in the lives of their children, than for obligors who are not involved other than through payment of monthly child support.¹⁵

But Rule 90.3 does not provide or allow the exception Mr. E seeks to invoke. The duty to provide financial support for one’s child is separate from the duty to parent that child. Rule 90.3 addresses the financial support component only, and does so through a formula based on the obligor’s ability to pay.¹⁶ As noted above, Mr. E did not show that the formula was incorrectly

¹² See Civil Rule 90.3, Commentary III.E.

¹³ AS 25.27.190(e).

¹⁴ \$293.00 x 1.15 = \$336.95.

¹⁵ In response to questions about credit for an obligor’s direct expenditures, Ms. Cain reviewed for the record the limitations on availability of credits for in-kind support in lieu of child support payments, and also explained that, even in the limited instances in which such a credit might be available, the availability of a credit does not alter the monthly support amount calculated in the governing Administrative Child Support and Medical Support Order. See AS 25.27.020(b); 15 AAC 125.465(f). Ms. Cain similarly reviewed the method by which the Division handles health insurance credits, which, when available, likewise do not change the calculation of the underlying monthly support amount as set out in the administrative Child Support and Medical Support Order.

¹⁶ See Civil Rule 90.3, Commentary I.A.

applied in the calculation of his monthly support obligation in the August 2015 Modification Order. He therefore has not met his burden of proof in this case.

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁷ Because CSSD sent the parties notice of the petition for modification on June 10, 2015, this modification is effective as of July 1, 2015.¹⁸

IV. Conclusion

CSSD correctly calculated Mr. E's monthly support obligation for R pursuant to Rule 90.3.

V. Child Support Order

1. T K. E is liable for child support in the amount of \$459.00 per month for one child effective July 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated August 12, 2015 remain in full force and effect.

DATED the 14th day of October, 2015, *nunc pro tunc*, the 28th day of September, 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 14th day of October, 2015.

By: Signed

Signature
Cheryl Mandala

Name
Administrative Law Judge

Title

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

¹⁷ 15 AAC 125.321(d).

¹⁸ See Ex.4.