

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

In the Matter of	)	
	)	
M N	)	OAH No. 15-1399-CSS
_____	)	Agency No. 001202973

**DECISION AND ORDER**

**I. Introduction**

This is an establishment proceeding initiated when the custodian N N. E Q requested child support services from the Child Support Services Division (CSSD). M N is the obligor. L is the obligee child. L and her mother live in the Philippines.

There have been several hearings in this matter. The record closed at the conclusion of the January 21, 2016 hearing. Mr. N and Ms. E Q participated by telephone. CSSD representative Brandi Estes appeared in person.

CSSD issued an Amended Administrative Child Support and Medical Support Order dated September 22, 2015. This order established Mr. N's support in the amount of \$547 per month for one child effective October 1, 2014 and ongoing. Mr. N raised several objections to the order. Through the hearing process, he narrowed his challenge to one issue: he believes he should receive a hardship variance under Alaska Rule Civil Procedure 90.3(c) from the \$547 per month support amount calculated under Alaska Rule Civil Procedure 90.3(a). Based on the record and after careful consideration, CSSD's Amended Administrative Review Decision is affirmed, and Mr. N's request for a reduction based on financial hardship is denied.

**II. Facts**

Mr. N lives with his wife in a house they are buying. They have one child living with them who is older than L. They also live with two roommates. Each roommate pays \$450 a month. Mr. N's wife earns \$24,000 per year (gross earnings).<sup>1</sup> In the four quarters preceding CSSD's September order, Mr. N had earnings reported to the Alaska Department of Labor totaling \$60,027.19 per year (gross earnings).<sup>2</sup>

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<sup>1</sup> Exh. 13; N Testimony.

<sup>2</sup> Fourth quarter 2014 and first three quarters 2015. Exh. 14.

Mr. N reported regular monthly expenses of \$7,021.53,<sup>3</sup> which includes \$2,800 for his mortgage payment; \$600 for food; \$170 for natural gas; \$125 for Internet service; \$135 for cable; \$136 for electricity; \$160 for water and trash removal; \$319.53 for cell phones and a land line; two vehicle payments totaling \$820;<sup>4</sup> \$339 insurance; \$400 gasoline and \$1,017 for the payments on four consumer debts. Because his expenses exceed his monthly income, Mr. N testified that he will take on odd jobs from time to time.

### **III. Discussion**

#### *A. Overview of Applicable Law*

A parent is obligated both by statute and at common law to support his or her children.<sup>5</sup> 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."<sup>6</sup> 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.

As the party who filed the appeal, Mr. N has the burden of proving that he is entitled to a reduction in his child support amount based on financial hardship.

#### *B. Financial Hardship*

Mr. N asserts that he cannot afford the child support amount calculated by CSSD in its September 22, 2015 Amended Administrative Child Support and Medical Support Order. CSSD calculated Mr. N's annual income at \$58,750.45 (gross earnings, 2014), and set a monthly child support amount of \$547 for one child based on the income calculation.<sup>7</sup> This includes a deduction for Mr. N's older child living in the home.

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

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<sup>3</sup> Exh. 13 at pg. 1.

<sup>4</sup> Mr. N still owes \$24,750 for the two vehicles.

<sup>5</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>6</sup> AS 25.27.190(e).

<sup>7</sup> Exh. 8 at pg. 9. The income amount was undisputed at hearing.

establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”<sup>8</sup>

Mr. N’s adjusted income is \$3,635.<sup>9</sup> This does not include his wife’s income. He has total household expenses in the amount of \$7,021.63. Admittedly, his and his wife’s incomes are insufficient to meet all of his household expenses. When asked how he makes ends meet, Mr. N testified that he will take on side jobs.

The establishment of this child support order has undoubtedly created financial stress for Mr. N, but his duty to his biological child takes priority over other debts and obligations he may have assumed later.<sup>10</sup> Mr. N’s monthly expenses reveal areas where savings could be found; for example, he pays over \$570 per month for phone, internet, and cable. His renters may need to contribute to utilities. Regardless, L is entitled to receive child support in an amount based on Mr. N’s ability to pay, as calculated pursuant to Civil Rule 90.3(a). That obligation has been correctly determined under the rule, and there is no evidence in the record that shows there is “good cause” to reduce his obligation.

Thus, based on the evidence in its entirety, Mr. N did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced. Mr. N’s child support should remain as calculated by CSSD.

#### **IV. Conclusion**

Mr. N did not prove by clear and convincing evidence that manifest injustice would result if his support obligation were not reduced. He is therefore not entitled to a variance from the amount calculated. Mr. N’s child support is correctly calculated at \$547 per month, effective October 1, 2014 and ongoing. This figure should be adopted.

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<sup>8</sup> Civil Rule 90.3(c).

<sup>9</sup> \$2,735 + \$900 rent.

<sup>10</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**V. Child Support Order**

- CSSD’s Amended Administrative Child Support and Medical Support Order, dated September 22, 2015, is affirmed: Mr. N is liable for child support for L in the amount of \$547 per month, effective October 1, 2014 and ongoing.

Dated: February 10, 2016

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
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 25<sup>th</sup> day of February, 2016.

By: *Signed* \_\_\_\_\_  
Signature  
Lawrence A. Pederson  
Name  
Administrative Law Judge  
Title

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