

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

In the Matter of)	
)	
B L. C)	OAH No. 15-1419-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001101930

DECISION AND ORDER

I. Introduction

B L. C disputes the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued dated October 8, 2015. This order increased Mr. C’s support from \$485 per month set in February 2001 to \$866 per month effective September 1, 2015. The obligee child is D, age 16. The custodian is O B. W. All parties participated in this proceeding.

Mr. C appealed CSSD’s October 2015 order arguing that he could not afford the increased support because he was unemployed and CSSD overstated his income. Mr. C’s unemployment is, at this time, considered a temporary situation. However, using information not previously available, Mr. C’s income was overstated. His ongoing child support obligation for D should be \$616 per month.

II. Facts

Mr. C and Ms. W are the parents of their 16-year-old daughter, D. In 2001, CSSD set Mr. C’s support obligation in the amount of \$485 per month.¹ It remained unchanged until Ms. W sought modification in August 2015. CSSD sought current income information so it could consider whether modification was appropriate.² Ms. W supplied her 2013 and 2014 Federal income tax returns.³ Mr. C did not respond to CSSD’s request, so CSSD based its calculation on Mr. C’s reported earnings to the Department of Labor less allowable deductions.⁴ This resulted in an upward modification to \$866 per month for one child effective September 1, 2015.⁵

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 4, at pp. 4, 5.
⁵ Exhibit 4.

On October 29, 2015, CSSD received Mr. C's appeal. He wrote that he was unexpectedly laid off and CSSD overstated his income.⁶ Mr. C contended that his income as of October 26, 2015 was \$53,476⁷ and he could not pay the amount of support ordered until he returned to work. When he was laid off he was making \$34.33 per hour. His only source of income was unemployment in the amount of \$450 per week. Mr. C is a Journeyman Laborer. The Union Hall told him not to take any temporary work because they expected he would return to work after November.⁸ Mr. C's monthly expenses total \$2,451.27.⁹

Ms. W works part time and earns \$17.91 per hour or \$17,910 per year.¹⁰ She explained she sought modification because she could not provide for their daughter on her salary and child support.¹¹

At the Administrative Law Judge's direction, CSSD recalculated Mr. C's child support obligation using his hourly wage, \$34.44 per hour, working full time. This resulted in an annual wage in the amount of \$71,635.20.¹² CSSD included \$999 as dividends from his Native Corporation. From this amount it deducted Mr. C's monthly union dues, state taxes and state disability insurance.¹³ This resulted in a monthly child support obligation in the amount of \$694 for one child.¹⁴

On December 16, 2015, CSSD submitted a second Submission to Record. This submission provided another child support calculation. This calculation included all dividends earned from Facility X, Inc. and Facility Y, Inc. The dividends add \$4,851 in income to the child support calculation resulting in a monthly child support obligation in the amount of \$742 for one child.¹⁵

Mr. C responded to CSSD's Submissions. He emphasized that his income was overstated, that he has been out of work and is number 30 on the rehire list and has no idea when

⁶ Exhibit 5.

⁷ \$48,876 + \$3600 = \$53,476. Exhibit 5.

⁸ C Testimony.

⁹ Rent \$1,250 + Food \$250 + Cellular Phone \$24 + Auto Payment \$607.27 + Gasoline \$100 + Insurance \$120 + Consumer Debt \$100 = \$2,451.27. Mr. C owns a 2013 Ford Edge and owes \$24,284.65. He has consumer debt totaling \$2,151 and is making monthly payments in the amount of \$100. Exhibit 7.

¹⁰ W Testimony.

¹¹ W Testimony.

¹² December 11, 2015 Submission to Record; Exhibit 8.

¹³ December 11, 2015 Submission to Record; Exhibit 8.

¹⁴ Exhibit 8.

¹⁵ December 16, 2015 Submission to Record; Exhibit 9.

he will return to a union construction job and if he took temporary employment he would only earn \$10 - \$13 per hour. Mr. C also believes CSSD was incorrect to include his unemployment insurance as income for purposes of child support.

III. Discussion

A. Overview of Applicable Law

Every parent is obligated both by statute and at common law to support his or her children.¹⁶ 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.”¹⁷

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. 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.”¹⁸ The obligor parent has the burden of proving his or her earning capacity.¹⁹

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”²⁰ But “[t]he change ordinarily must be more or less permanent rather than temporary.”²¹ Unemployment, for example, is typically presumed to be temporary. 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. C’s support was set at \$485 per month in February 2001. An order ordering child support in the amount of \$556 or higher would be sufficient to modify his child support obligation at this time.

B. Child Support Calculation

Under Civil Rule 90.3, a parent’s current / ongoing child support obligation should be based on the amount the parent can be expected to earn during the period the support is being

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁷ Civil Rule 90.3, Commentary I.B.

¹⁸ *See* Civil Rule 90.3, Commentary III.E.

¹⁹ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

²⁰ AS 25.27.190(e).

²¹ *See Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988) (“[A] trial court should be reluctant to modify child support obligations when the obligor’s loss of income appears only temporary.”); *Curley v. Curley*, 588 P.2d 289, 291, (Alaska 1979).

paid.²² This determination is necessarily somewhat speculative because the relevant income figure is expected future income.²³ The amount earned, more often than not, translates to a parent's ability to pay. Ability to pay is the standard.²⁴

Alaska law generally considers unemployment to be a temporary circumstance, and one that should not typically result in an adjustment of an obligor parent's child support obligation.²⁵

Mr. C has been unemployed for six months. He testified that he could find work earning one-third of his prior hourly rate. He also testified that he did not pursue or accept employment because the Union Hall told him he could expect to return to work soon. Based on his testimony it is reasonable to conclude that Mr. C's failure to take employment of any kind is because he believes his unemployment is temporary and that he will be returning to work as a Journeyman Laborer in the near future. Mr. C is expected to maintain his support obligation.

At issue is the amount of that support obligation. Mr. C asks that his support obligation remain at \$485 per month and CSSD overstated his income. He also believes that his unemployment insurance should not be included as income for purposes of child support. He is mistaken.²⁶ Mr. C contends that when he is dispatched he does not expect to work on a regular full time basis. However, he failed to provide evidence other than his self-serving testimony on the typical hours a Journeyman Laborer will work in a year or how much that person will earn in a year (including unemployment). Mr. C's testimony is neutral. The best evidence in the record is Mr. C's actual earnings.

Child support determinations calculated under Civil Rule 90.3(a) from a parent's actual income are presumed to be correct. As of August 8, 2015, Mr. C had year to date earnings in the amount of \$49,876. August 8, 2015 was the 31st week of the year. For the remaining 21 weeks he received \$450 each week from unemployment (\$9,450). When his Native dividends are included, Mr. C received actual income in 2015 in the amount of \$64,117.²⁷ When this amount

²² Civil Rule 90.3, Commentary, Section III(E).

²³ Civil Rule 90.3, Commentary, Section III(E).

²⁴ Commentary Civil Rule 90.3 I.B., Commentary, Section III(E).

²⁵ *See Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988) (“[A] trial court should be reluctant to modify child support obligations when the obligor's loss of income appears only temporary.”)

²⁶ Alaska Rule Civil Procedure Commentary III.A.12.

²⁷ Wages \$49,876 + Unemployment \$9,450 + Other Taxable Income \$4,851 = \$64,177.

is placed into CSSD's online child support calculator it reveals that Mr. C's monthly child support obligation is \$616.²⁸

This amount is correct because it is based on Mr. C's actual annual income, minus mandatory deductions, and includes deductions for items such as union dues. Modification is appropriate because this amount is more than a 15% increase of the prior child support obligation.

C. *Hardship Analysis*

The law presumes that child support calculated pursuant to Alaska Rule Civil Procedure 90.3(a) is appropriate in the vast majority of circumstances, and should only be departed from for good cause.²⁹ 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."³⁰ The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[31]

The timing of the modification may create financial stress for Mr. C, but his duty to his biological child takes priority over other debts and obligations he may have assumed later.³² D is entitled to receive child support in an amount based on Mr. C's ability to pay, as calculated pursuant to Civil Rule 90.3. That obligation has been correctly determined under the rule. Periods of unemployment are not an unusual circumstance. There is no evidence in the record that shows there is "good cause" to reduce his obligation.³³

IV. **Conclusion**

Mr. C's child support obligation calculated pursuant to Civil Rule 90.3(a) should be \$616 per month effective September 1, 2015. If Mr. C's unemployment should prove to be more than temporary he may request modification.

²⁸ Attachment A.

²⁹ Civil Rule 90.3, Commentary VI.B.

³⁰ Civil Rule 90.3(c).

³¹ Civil Rule 90.3(c)(1).

³² See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

³³ Mr. C testified that he has taken odd jobs to make ends meet. He may need to do so more frequently.

V. Child Support Order

1. B L. C is liable for child support in the amount of \$616 per month for 1 child effective September 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated October 8, 2015 remain in full force and effect.

Dated: February 11, 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 26th day of February, 2016.

By: Signed

Signature
Christopher Kennedy

Name
Deputy Chief ALJ

Title

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