

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

In the Matter of)	
)	
K L. K)	OAH No. 15-1567-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001139716

DECISION AND ORDER

I. Introduction

The obligor, K L. K, contends that the Child Support Services Division (CSSD) overstated his income when it modified his existing \$300 per month child support obligation to \$800 per month, and subsequently, to \$833 per month. N L is the custodian. H is the obligee child. In the alternative, Mr. K requests a variance because the increase in support will cause a financial hardship for his present family. Mr. K did not establish that CSSD overstated his income. He did establish that CSSD understated allowable deductions. Using his actual earnings and allowable deductions, his monthly child support obligation is \$729, effective October 1, 2015. Mr. K's request for a hardship variance is denied because his monthly income exceeds his monthly expenses, including child support, by \$1,676. Because his income exceeds his monthly expenses, he has not established by clear and convincing evidence that an increase in child support from \$300 per month to \$729 per month is manifestly unjust.

II. Facts

Mr. K and Ms. L are the parents of H. On September 23, 2015 Ms. L petitioned for modification.¹ The parties were notified of the petition and CSSD's request for current income information. Neither party provided the information as requested.

On November 3, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Mr. K's support obligation to \$833 per month effective October 1, 2015.² CSSD calculated support using four quarters of wages as reported by Mr. K's employer to the Alaska Department of Labor (\$51,740.46), income as a reservist as

¹ Exhibit 1. CSSD did not include the order being modified. Any information concerning the order being modified is deduced from the evidence presented at hearing. For example, Mr. K argued that a \$500 a month increase was financially burdensome. Because the modified amount proposed by CSSD was \$800 a month, it was deduced that the original support order must have been \$300 per month.

² Exhibit 4.

reported by the Defense Finance and Accounting Service (\$9,372) and the Alaska Permanent Fund Dividend (\$2,072).³

Mr. K appealed because CSSD overstated his income with the military, failed to include all allowable deductions, and failed to consider that he has a child at home younger than H.⁴

The hearing process revealed evidence not previously provided to CSSD. Mr. K is married. He and his wife have a child younger than H. His wife testified regarding her income and the household's expenses. When the entire record is viewed as a whole, Mr. K's support obligation should be modified upward to \$729 per month and his request for a hardship variance denied.

III. Discussion

A. Overview of Applicable Law

Every parent is obligated both by statute and at common law to support his or her children.⁵ 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."⁶

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 that the parent can be expected to earn during the period the support is being paid.⁷ 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."⁸ The amount earned, more often than not, translates to a parent's ability to pay. Ability to pay is the standard.⁹ The obligor parent has the burden of proving his or her earning capacity.¹⁰

³ Exhibit 4 at pp 5, 6.

⁴ Exhibit 5 at p 2.

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

⁶ Civil Rule 90.3, Commentary I.B.

⁷ Civil Rule 90.3, Commentary, Section III(E).

⁸ *See* Civil Rule 90.3, Commentary III.E.

⁹ Civil Rule 90.3 I.B., Commentary, Section III(E).

¹⁰ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹¹ But “[t]he change ordinarily must be more or less permanent rather than temporary.”¹² 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.

When a parent seeks a hardship variance, the first step is to calculate the amount of child support the obligee child(ren) are entitled to without a variance. It is from this figure that a parent’s request for variance will be considered.

B. Mr. K’s Child Support Obligation Under Civil Rule 90.3(a)

1. Military Pay

Mr. K raised two objections to the amount of military pay included for purposes of child support. The first is that his \$2,000 signing bonus is contingent on factors not within his control, and therefore should not be included for purposes of child support. The second is that his two weeks a year of active duty is paid on a different schedule than when he is working one weekend a month.

As to the \$2,000 signing bonus, Mr. K testified that, subject to funding, he would receive a bonus next year. Because the bonus was contingent on funding, he believed it was too speculative to include as income. The Commentary to Alaska Rule Civil Procedure 90.3 instructs that a

‘parent’s total income from all sources’ . . . should be interpreted broadly to include benefits which would have been available for support if the family had remained intact. Income includes, but is not limited to:

1. Salaries and wages (including overtime and tips);

. . .

5. bonuses and profit sharing¹³

Therefore, the signing bonus is included as income for purposes of child support.

¹¹ AS 25.27.190(e).

¹² 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).

¹³ Civil Rule 90.3 I.B., Commentary, Section II(A).

Mr. K did provide nine months of earnings records. CSSD annualized the nine months of income information by dividing by nine for a monthly average, and multiplying the monthly average by 12. Mr. K indicated this method would not present an accurate result, and he was provided an opportunity to present an alternative calculation. The exact mathematical formula advocated by Mr. K was unclear.

Mr. K does not challenge the conclusion that within a 12-month period he would have worked two months and weekends as a traditional reservist, so a 12-month period of earnings as a reservist would encompass any changes in the pay period. To avoid the pitfalls, either real or perceived, the amount of military pay included in Mr. K's child support calculation will be the amount reported to the DFAS Cleveland Center for the last quarter of 2014 and the first three quarters of 2015.¹⁴

2. Overtime

As set forth above, the Commentary to Civil Rule 90.3 provides that overtime and tips are included when calculating a "parent's total income for all sources."¹⁵ Therefore, Mr. K's overtime is included for purposes of child support.

3. Amount of Support Owing

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Mr. K has income from two sources: regular wages and reservist pay. Here, the most accurate representation of Mr. K's ability to pay child support are his actual income figures for the fourth quarter of 2014 (\$14,299.93) and the first three quarters for 2015 (\$45,054.53).¹⁶ Added to this total (\$60,254.46) is the Permanent Fund Dividend (\$2,072). Mr. K is entitled to certain deductions including retirement. After allowable deductions, Mr. K owes child support for one child in the amount of \$729 per month effective October 1, 2015.¹⁷

C. Hardship Variance.

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

¹⁴ Exhibit 6 at p.1.

¹⁵ Civil Rule 90.3 I.B., Commentary, Section II(A).

¹⁶ Exhibit 6.

¹⁷ Attachment A.

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.”¹⁸

Mr. K’s adjusted monthly income is \$3,646.75. His wife testified that her adjusted monthly income is \$5,741. Their combined adjusted monthly income is \$9,388. As testified to by Mr. K and his wife, their monthly household expenses are \$7,712.¹⁹ Household income exceeds household expenses by \$1,676. Modifying Mr. K’s child support obligation to \$729 per month is not manifestly unjust.

The modification of this child support order will not create financial stress for Mr. K because, once his wife’s income is considered, the expenses do not exceed the household’s adjusted net income. Moreover, Mr. K’s duty to his oldest biological child takes priority over other debts and obligations he may have assumed later, including his younger child. H is entitled to receive child support in an amount based on Mr. K’s ability to pay, as calculated pursuant to Civil Rule 90.3(a). Mr. K has not established that there is “good cause” to reduce his obligation to H.

IV. Conclusion

Based on the evidence in its entirety, Mr. K did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.(a) using his actual income were not reduced.

V. Child Support Order

1. K L. K is liable for child support in the amount of \$729 per month for one child effective October 1, 2015 and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated November 3, 2015 remain in full force and effect.

Dated: February 16, 2016.

Signed

Rebecca L. Pauli
Administrative Law Judge

¹⁸ Civil Rule 90.3(c).

¹⁹ Rent \$2,000; Electric \$200; Gas \$95; Cable and Cell \$405; Renters Ins. \$18; Auto Payment and Expenses \$1,424; Credit Card and Loans \$2,460; Personal and Food \$1,000; Water \$90; Misc. \$100.

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 2nd day of March, 2016.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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