

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

In the Matter of)	
)	
K X)	OAH No. 15-1651-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001135258

DECISION AND ORDER

I. Introduction

This matter involves K X’s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 25, 2015. That agency decision modified his ongoing child support obligation. The other party to the case is C L.

The formal hearing was held on January 14, 2016. Both parties appeared by telephone. Joseph West, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. X’s child support is modified to \$1,703 per month effective November 1, 2015 through December 31, 2015 and \$949 per month effective January 1, 2016 and ongoing.

II. Facts

Mr. X and Ms. L are the parents of O, age 11. In September 2013, Ms. L requested modification of the parties’ 2008 support order. The 2008 order set ongoing support in the amount of \$643 effective November 2007.¹ On November 25, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order modifying Mr. X’s support obligation to \$1,703 per month effective November 2015.

Mr. X appealed. In 2015, he earned \$136,962. Of that amount, \$80,703 was earned by working overtime and \$56,258 at his regular pay rate. Mr. X agrees that this is a current income figure; however, he believes CSSD should have excluded his overtime earnings because those earnings were used to reduce his arrears owing and bring him current on support. He also argues that he was terminated from his position due to a reduction in force.

Mr. X had been employed on the slope as a journeyman electrician for 2014 and 2015 earning well over \$115,000 each year. As a “sloper” he worked two weeks on and two

¹ Exh. 1.

weeks off. During his two weeks on, it is usual and customary to work 40 plus hours of overtime. The slope jobs are disappearing and there have been thousands of oil industry jobs lost as the oil prices decline. Mr. X testified that he is doubtful he will be returning to a slope position in the foreseeable future. While he is currently unemployed, he is looking for work and is able to work. He believes that he will be able to obtain a journeyman electrician position at \$36 per hour, 40 hours per week.

Ms. L believes child support should be based upon his proven ability to earn over \$115,000 per year. She testified that her mother works for a native corporation and her mother's employer is always looking for employees. However, Ms. L did not know what positions were open, whether Mr. X was qualified for the positions, or what the positions paid.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances." 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.

Civil Rule 90.3(a)(1) provides that a parent's child support is to be calculated based on his or her "total income from all sources." 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."² The obligor parent has the burden of proving his or her earning capacity.³ Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct.

Mr. X originally asked that his income for purposes of child support not include overtime. He noted that under the commentary to Civil Rule 90.3.VI.B.9 that this tribunal "has the discretion not to include [overtime income] when . . . the extra work is undertaken to pay off back child support." This is not the type of case that would support such an exercise of discretion. The overtime earned is, for slope work, part of the usual pay package. Mr. X's request to exclude his overtime is denied. Moreover, he did not accept the overtime in an effort

² See Civil Rule 90.3, Commentary III.E.

³ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

to pay down his arrears. As previously stated, the overtime earned was expected and required. In this respect, it is closer to regular dependable income.

Here, there is no dispute that CSSD's child support calculation is based on Mr. X's income from all sources. The support calculation of \$1,703 is more than a 15% increase from the current order of \$643. Therefore, it meets the threshold for modification.

Mr. X argues that modification is improper because he lost his job due to a reduction in force. In the current Alaska economy, oil companies are terminating thousands of employees. It is unlikely that he will be working on the North Slope anytime in the near future. He testified that he is actively looking for work and has at least one good lead on a job. In essence he is requesting a variance in his child support obligation.

An obligor may obtain a reduction in the amount, but 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."⁴ The existence of "unusual circumstances" may also provide a sufficient basis for a finding of good cause to vary the calculated child support amount.⁵ It is appropriate to consider all relevant evidence 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).⁶

Ms. L testified that her mother told her jobs were available. When questioned further, Ms. L could not recall what the jobs were, the training required, or what these jobs paid. Ms. L has provided for her daughter. However, her testimony does not establish that Mr. X could obtain a position making what he made while working on the slope.

If it were not for the economy and the news reports of slope work slowing down, the outcome of this appeal would be very different. However, considering all relevant evidence, Mr. X has established the existence of unusual circumstances that warrant a support amount that will fulfill the purpose of Civil Rule 90.3. The amount of support a child is entitled to receive from a parent is determined by that parent's ability to provide for the child.⁷

⁴ Civil Rule 90.3(c).

⁵ Civil Rule 90.3(c)(1).

⁶ See Civil Rule 90.3, Commentary VI.E.1.

⁷ See Civil Rule 90.3, Commentary I.B.

Therefore, Mr. X's ability to provide must be considered. According to the Alaska Department of Labor, \$36 per hour is the average hourly wage for a journeyman electrician in Alaska.⁸ Mr. X agreed that this is the hourly wage he expects to earn, and that he will work 40 hours per week (2,080 hours per year). Mr. X's future annual earnings will, more likely than not be in the amount of \$74,880.

Using CSSD's online child support calculator this results in a support amount of \$949 per month for one child.⁹ This support is more than a 15% increase from the current support obligation and modification is appropriate. However, for the months of November and December 2015, when Mr. X was employed on the slope at his higher wage, the support will be as originally calculated by CSSD.

IV. Conclusion

Under Civil Rule 90.3(a), CSSD correctly calculated Mr. X's child support for one child in the amount of \$1,703 per month effective November 2015. However, Mr. X has established by clear and convincing evidence that effective January 2016 forward there was an unusual circumstance that rose to the level of good cause under Civil Rule 90.3(c) to vary his support to \$949 per month for one child.

V. Child Support Order

1. K X is liable for child support in the amount of \$1,703 per month for one child effective November 2015 and December 2015;
2. K X is liable for child support in the amount of \$949 per month for one child effective January 2016 forward;
3. All other terms of the Modified Administrative Child Support and Medical Support Order dated November 25, 2015 remain in full force and effect.

Dated: February 3, 2016

Signed

Rebecca L. Pauli
Administrative Law Judge

⁸ As offered by CSSD. CSSD reported that the figure was obtained from the Alaska Department of Labor.

⁹ Attachment 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 17th day of February, 2016.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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