

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

In the Matter of)	
)	OAH No. 16-0054-CSS/16-0055-CSS
B T)	Agency No. 001180910
)	Agency No. 001208411
_____)	

DECISION AND ORDER

I. Introduction

B T appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 4, 2015. CSSD’s Order added another child – Mr. T’s daughter, L – to his existing child support case, and increased Mr. T’s monthly child support obligation. Based on the evidence in the record, this decision concludes that CSSD has properly modified Mr. T’s child support obligation both to add a second child to the Order and to account for Mr. T’s increased income since support was initially set. Accordingly, CSSD’s November 2015 Modified Administrative Child Support and Medical Support Order is affirmed in all respects.

II. Factual and Procedural History

A. Material Facts¹

Mr. T works on Alaska’s North Slope. He has had the same employer for at least three years, earning slightly more in each of those years than in the year before. In 2013, he earned \$54,169.54; in 2014, he earned \$59,514.89; in 2015, he earned \$60,770.15.²

Mr. T’s six-year-old son, Z, and four-year-old daughter, L, are in foster care in Alaska. Mr. T also has two other children who live in Arizona and for whom he apparently also pays child support.

The child support order at issue in this case was first issued in January 2012, at which time it only set support for Z. CSSD’s January 2012 Administrative Child Support and Medical Support Order set Mr. T’s monthly support obligation for Z, who was in foster

¹ The facts set forth herein are established by a preponderance of the evidence based on the exhibits in the record and CSSD’s case presentation at hearing.

² Ex. 6, p. 1.

care, at \$417 per month.³ This calculation was based on Mr. T's income at the time, was calculated using the formula that applies when a child is in State custody, and reflected a credit against Mr. T's support obligation for supporting another child who was not in State custody.⁴

L was born after entry of the January 2012 Order, and the current action is a modification of that Order to include her in the support calculation.⁵

CSSD initiated a support action on L's behalf after the Office of Children's Services notified CSSD that L was in foster care.⁶ In August 2015, CSSD received genetic testing results confirming that Mr. T is L's biological father.⁷ Accordingly, on September 2, 2015, CSSD issued a Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order.⁸ The notice advised Mr. T that CSSD would "be establishing an obligation (which may include arrears) for [L] and modifying your current order to add [L] to the order."⁹ The notice directed Mr. T to provide current income information, but he did not do so.¹⁰

On November 4, 2015, CSSD issued a Decision on Request for Modification Review, and a Modified Administrative Child Support and Medical Support Order.¹¹ The Modified Administrative Child Support and Medical Support Order amended the January 31, 2012 Support Order by adding L to the Order, and now applying support calculations based on the support of two children instead of one. The November 2015 Order also based the support calculation on a higher income amount than the amount CSSD had used in 2012.¹² While the 2012 Order was based on an annual wage figure of \$43,560.22, the 2015 Order used an updated annual wage figure of \$57,945.80.¹³

The November 2015 Order set Mr. T's new support amount for two children at \$707 per month, and established arrears of \$1,770 "for assistance paid or past due support" for L

³ Ex. 1, p. 1.

⁴ Ex. 1, pp. 4, 8.

⁵ See Ex. 4, p. 2.

⁶ CSSD hearing presentation; 15 AAC 125.340(a)(2).

⁷ Ex. 2, p. 1.

⁸ Ex. 3.

⁹ Ex. 3.

¹⁰ Ex. 3.

¹¹ Ex. 4.

¹² Ex. 1, p. 7; Ex. 4, p. 7.

¹³ Ex. 1, p. 7; Ex. 4, p. 7.

from May 1, 2015, through September 30, 2015.¹⁴ The Order indicated that support had been calculated based on Mr. T's "total income from all sources based on actual information."¹⁵ Specifically, as it had done in 2012, CSSD based its 2015 support calculation on Mr. T's most recent four quarters of employer-reported income.¹⁶

CSSD then followed the Rule 90.3(i) third-party custody formula to set a support amount of \$707 per month for the two children in this order.¹⁷ CSSD also used third-party custody calculations to determine Mr. T's monthly support obligation for L for the months between the request for support and the November 2015 Order. From May 1, 2015, through September 30, 2015, the Order concluded, Mr. T was responsible for arrears in the amount of \$353 per month.¹⁸

B. Procedural History

CSSD served Mr. T with the November Modified Administrative Order on January 9, 2016.¹⁹ On January 12, 2016, Mr. T filed a request for an administrative appeal.²⁰ In the space where he is asked to identify the basis for his appeal, Mr. T noted that he has monthly expenses including rent ("\$1,100 monthly plus \$75.00 late fee"), life insurance (\$231), electricity (\$50 or more per month) and food ("\$50-100"). He also added that he owes "over \$50,000 or more to child support in Arizona."²¹

Both the November Modified Administrative Order and the appeal form attached to that order bear two separate Dept. of Revenue case numbers. This is because the children have at various times been in both federal and non-federal foster care placements, and CSSD tracks payments and arrears separately for those two types of placements. Because Mr. T's request for appeal was written on a form bearing two separate case numbers, his request to appeal the November Order generated two separate case referrals to OAH.

Both cases were set for back-to-back hearings on February 9, 2016. At his request, notice of the hearing was sent to Mr. T via email, in addition to being sent via certified mail.

¹⁴ Ex. 4, pp. 2-3.

¹⁵ Ex. 4, pp. 5-6.

¹⁶ Ex. 4, p. 7.

¹⁷ Ex. 4, p. 9. Of note, this support amount is significantly less than the \$1,060 monthly support amount for two children under Rule 90.3(a)(2). *Compare* Ex. 4, p. 9 *with* Ex. 4, p. 7.

¹⁸ Ex. 4, pp. 1, 8, 10. It appears that May 2015 is when L entered foster care. *See* Ex. 4, p. 8 and 15 AAC 125.30(a)(2), (d).

¹⁹ Ex. 4, p. 15.

²⁰ Ex. 5.

²¹ Ex. 5.

Nonetheless, Mr. T did not appear for either hearing, was unable to be reached at the phone number he had provided, and did not return a voice mail message directing him to call OAH if he intended to participate. At the start of the first hearing (in 16-0054-CSS), CSSD's representative confirmed that, despite two referrals having been sent, this dispute is in fact only a single appeal. Accordingly, a consolidated hearing was then held.²²

As noted, Mr. T did not participate in either hearing. Pursuant to 15 AAC 05.030(j), the record was held open for ten days to allow Mr. T to show reasonable cause for his failure to appear. The record closed without contact from Mr. T.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.²³ As the person who filed this appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Order is incorrect.²⁴

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²⁵ Here, the support order was modified to add another child, L. This is a material change in circumstances and constitutes good cause to modify the support order.²⁶

CSSD followed the appropriate procedures to set a new support amount. 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 and Social Security. Civil Rule 90.3(a)(2) then provides the formula used to establish the parent's support obligation based on the number of children covered by the support award – basically, providing a multiplier that increases based on the number of children. However, the additional formula set out in Civil Rule 90.3(i) also applies where, as here, some or all of a parent's children are in the custody of the State.

²² Because a second notice of hearing indicated that another hearing would be held an hour after the hearing in 16-0054-CSS, the administrative law judge attempted to reach Mr. T again at the time set for that second hearing. However, he again did not answer his phone.

²³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁴ 15 AAC 05.030(h).

²⁵ AS 25.27.190(e).

²⁶ See 15 AAC 125.321(b)(2)(B). The evidence also shows that Mr. T's annual income increased considerably between 2012 (\$43,580.22 in wages subject to FICA) and 2015 (\$57,945.80 in wages subject to FICA), a material change that independently supports modification of his support order.

When some or all of a parent's children are in the custody of the State or some other third-party, the obligor parent's total support obligation for all children is first determined under 90.3(a)(2), and that support obligation is then apportioned, if appropriate, to determine the obligation owed solely for the children in custody. CSSD applied that formula here to first determine Mr. T's total support obligation for all four children, and then reduce that obligation to apply only to the two children in State custody.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. CSSD calculated Mr. T's support obligation using his most recent four quarters of income. It appropriately applied the formula of Rule 90.3(i) to that income, and resulting support amount is presumed correct.²⁷ Mr. T did not meet his burden of showing that CSSD erred in calculating his support amount.

A final issue in this case is whether Mr. T is entitled to a variance from the support obligation calculated under Rule 90.3. A parent may obtain a reduction in the support amount calculated under Rule 90.3 only upon showing 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."²⁸ This is a very high burden precisely because the Rule 90.3 formula is presumed to correctly determine the appropriate support amount in the vast majority of circumstances.

Mr. T did not appear at the hearing. As such, he did not present any testimony or other evidence to either explain or support his appeal. To the extent to which Mr. T's request for appeal is read to argue that his monthly expenses entitle him to a hardship variance from the properly calculated support amount, he did not meet his heavy burden of showing he is entitled to such a variance.

As a threshold matter, the support amount as calculated by CSSD is based on a lower-than-actual income, and, because the shared custody formula was applied, is a substantially lower amount than a straight Rule 90.3(a) calculation for two children at that income amount.²⁹ Mr. T earns \$60,000 per year. Neither his modest monthly expenses nor

²⁷ If anything, the evidence shows that CSSD slightly underestimated Mr. T's income – basing the support award on an annual income of \$57,945 per year, whereas, at hearing, the evidence showed that Mr. T earned \$60,770 in 2015. *See Ex. 6, p. 1.*

²⁸ Civil Rule 90.3(c).

²⁹ *See Ex. 4, p. 7.*

his apparent failure to pay child support in another state entitle him to a variance here.³⁰ Mr. T did not meet his high burden of showing that he is entitled to a variance from support as calculated under Rule 90.3.

IV. Conclusion and Order

Mr. T did not meet his burden of proving that support was improperly set or that he is entitled to a variance. Accordingly, all terms of the Modified Administrative Child Support and Medical Support Order dated November 4, 2015 remain in full force and effect.

Dated: February 29, 2016

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 15th day of March, 2016.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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

³⁰ An obligor's debts, "even if substantial," normally do not justify a reduction in support. Civil Rule 90.3, Commentary VI.B.4. Mr. T did not present any evidence to support a finding that debts justify a deviation from this rule.