

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

In the Matter of)	
)	
L C. T)	OAH No. 16-0064-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001198190

DECISION AND ORDER

I. Introduction

L C. T appeals the Order establishing his monthly child support obligation for his son, Z Y. After a full hearing and based on the evidence in the record, Mr. T’s monthly support obligation for Z is set as follows:

- For the months in 2015 when the parties shared custody (March – August 2015): \$67.38 per month;
- For the months in 2015 when the parties did not share custody (February, and September – December), and for January 2016: \$315 per month; and
- For ongoing support: \$315 per month.

II. Facts¹

L T and B Y are the parents of two-year-old Z Y. The parents previously lived together, but have not lived together since Z’s birth. The parties shared custody from March 2015 through August 2015, with Z spending 68% of time with Ms. Y, and 32% with Mr. T. Since September 2015, Z has lived solely with Ms. Y.

Both parents are employed. Ms. Y lives alone with Z, and works at a restaurant. Mr. T lives with his brother, and does seasonal work for No Name, LLC. The job is full-time through the end of the summer, becoming on-call beginning in October. Mr. T expects work to pick up again in late March. Because of the seasonal nature of his work, Mr. T earns more in the summer than in the winter, supporting himself during the winter months with money he saves during the summer months.

Mr. T was incarcerated during the first quarter of 2015, but worked at No Name for the remaining three quarters, and earned a total of \$22,060 for the year.² Mr. T did not

¹ The facts set forth herein are established by a preponderance of the evidence based on the parties’ testimony and the exhibits in the record.

receive a PFD during 2015 (e.g. the 2014 PFD), and did not apply for the 2015 PFD (e.g. the PFD that would be received during 2016).³

Ms. Y applied to establish paternity and child support services in February 2015, identifying Mr. T as Z's father.⁴ In July 2015, CSSD served Mr. T with an administrative order requiring him to provide financial and medical insurance information.⁵ At Mr. T's request, paternity testing was conducted.⁶ The paternity testing confirmed Mr. T to be Z's father, and on September 21, 2015, CSSD issued an order establishing paternity.⁷

Mr. T never responded to CSSD's order to provide financial information. On September 29, 2015, CSSD issued an Administrative Child Support and Medical Support Order, setting support at \$305 per month.⁸ The Order indicated that, because Mr. T had not provided any income information, the support amount was set based on an estimated annual income, derived as follows: "The income calculation is based on \$0.00 for the first quarter of 2015, and employer reported wages in the second quarter of 2015 [that] were multiplied by three to estimate your annual income."⁹ This methodology produced an annual gross income amount of \$21,261.84, for which the Rule 90.3 support calculation for one child is \$305 per month.¹⁰

Mr. T requested an administrative review, indicating that the parties had been sharing custody of Z, and also indicating that his "financial circumstances are not as CSSD determined."¹¹ Mr. T provided letters and records regarding his financial situation.¹²

² When CSSD initially requested earnings information from No Name, the employer inadvertently provided CSSD with info for Mr. T's cousin, A. Mr. T earns less money than his cousin, earning \$12 per hour.

³ Mr. T testified that he is unsure whether he is eligible for a PFD, because he is a convicted felon. Status as a convicted felon is not a per se bar to PFD eligibility, but a person is not eligible for a PFD for a dividend year if they were (1) sentenced during the qualifying year as a result of a felony conviction; (2) incarcerated at any time during the qualifying year as the result of a felony conviction; or (3) incarcerated for a misdemeanor in Alaska if convicted of a prior felony or two or more prior misdemeanors. AS 43.23.005(d). It does not appear that Mr. T received a PFD during 2015, and he was incarcerated during the qualifying year for the dividend to be distributed during 2016.

⁴ Ex. 1; Ex. 2.

⁵ Ex. 3. CSSD issued the order in March 2015, but was not able to serve Mr. T with it until July 2015. Ex. 3, pp. 2, 6.

⁶ Ex. 4; Ex. 5.

⁷ Ex. 5; Ex. 6.

⁸ Ex. 7.

⁹ Ex. 7, pp. 5, 8.

¹⁰ Ex. 7, p. 8.

¹¹ Ex. 8, p. 1.

CSSD separately contacted No Name to request earnings information. No Name responded that Mr. T had been a seasonal employee there for about eight years, with a current (though on-call) wage of \$19 per hour.¹³ At the hearing, however, Mr. T testified credibly that this is not accurate information, and appears to be the information of his similarly-named cousin. In fact, Mr. T has only worked at No Name since April 2015, and he earns \$12 per hour, not \$19 per hour.

At the time of its Administrative Review, CSSD was unaware of the discrepancy between Mr. T's actual wages and the information provided by No Name. After reviewing various possible calculations regarding different custody situations, CSSD issued an Amended Administrative Child Support and Medical Support Order, setting Mr. T's ongoing support obligation at \$529 per month – an amount CSSD now concedes is in error.¹⁴ In its prehearing brief, CSSD conceded that the calculations provided with the Order support setting a monthly support amount at \$461 per month, not the \$529 that was ordered.¹⁵

The hearing on Mr. T's appeal was held on February 18, 2016. Mr. T and Ms. Y both participated and both testified. Following the hearing, the record was held open to allow Mr. T to provide accurate income records to CSSD, for CSSD to prepare a proposed revised support calculation, and for the parties to submit any comments on that proposal.

On March 2, 2016, CSSD submitted Mr. T's 2015 W-2 from No Name, showing that Mr. T earned \$22,060.44 in 2015.¹⁶ CSSD also submitted revised proposed support calculations based on Mr. T's updated income information.¹⁷

CSSD's proposed revised calculations for 2015 were based on Mr. T's actual income for that year. CSSD's proposed revised calculations for 2016, however, were based on a higher amount. Specifically, because Mr. T was incarcerated and earned no income for one quarter of 2015, CSSD assumed that his 2016 income would be higher than his 2015

¹² Mr. T provided a November 2015 letter from D D T, Mr. T's sister, indicating that Z had lived with Mr. T from Monday through Thursday since March 2015, and November 2015 letters from Q O and E O-M, describing child care they had provided for Z while Z lived with Mr. T. Mr. T also provided a June 2015 lease agreement, some rent receipts, receipts for classes at the "No Name Center," a 2013 IRS receipt showing a 2013 adjusted gross income of \$8,426, and paystubs from No Name. Ex. 8, pp. 10-17.

¹³ Ex. 10.

¹⁴ Ex. 15.

¹⁵ CSSD's Prehearing Brief, p. 2 (citing Ex. 11, pp. 13-14).

¹⁶ Ex. 11.

¹⁷ Ex. 16; Ex. 17; CSSD March 2, 2016 Submission to Record.

income. To determine his 2016 income, CSSD divided the 2015 income by three – the number of quarters Mr. T worked that year – and then multiplied that figure by four – the number of quarters in a year. CSSD thus assumed a 2016 income of \$29,000, and proposed setting ongoing support based on that amount.¹⁸ CSSD also assumed receipt of a PFD for both 2015 and 2016.¹⁹

CSSD provided its revised proposed calculation to the case parties via email as agreed at the hearing, and the record was then held open to allow the parents to submit any response. The record closed without further comment or submissions by either parent.

III. Discussion

A. Applicable Law

A parent is obligated both by statute and at common law to support his or her children.²⁰ By regulation, CSSD collects support from the date the custodial parent requested child support services.²¹

Calculation of a parent’s support obligation is chiefly done through a formula set out in Civil Rule 90.3, and applied to the obligor’s “total income from all sources,” minus mandatory deductions (such as taxes and social security).²² Where parents exercise divided custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The child support award is calculated by first determining what each parent would owe the other in a primary physical custody situation, and then inserting those figures into the divided custody formula.²³

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.”²⁴ The obligor parent has the burden of proving his or her earning capacity.²⁵ Child support determinations calculated under Civil Rule 90.3 from an obligor’s actual income figures are presumed to be correct.

¹⁸ Ex. 16, Ex. 17; CSSD March 2, 2016 Submission to Record.

¹⁹ Ex. 16, p. 2; Ex. 17.

²⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²¹ 15 AAC 125.105(a)(1)-(2).

²² Rule 90.3(a)(1).

²³ Civil Rule 90.3(b)(2).

²⁴ See Civil Rule 90.3, Commentary III.E.

²⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

B. Mr. T's Support Obligation for 2015

When a child support order is first established, CSSD determines both pre-order arrears – that is, the amount owed from the date the proceeding was initiated until a final administrative order is issued – and then also determines the support amount going forward. Because arrears are calculated with the benefit of hindsight, the regulations provide that “total income from all sources is the *actual annual income* that the parent earned or received each calendar year for which arrears are sought to be established[.]”²⁶

CSSD recalculated support based on Mr. T's actual earnings for 2015. Support calculations based on actual earnings are presumed correct, and Mr. T has expressed no objection to CSSD's proposed revised support calculations. However, CSSD also included the PFD as income, an addition that does not appear to be supported by the record. Accordingly, the support calculation should be based on Mr. T's actual wage income, without the PFD.

Entering Mr. T's actual wage earnings amount into CSSD's online child support calculator with the PFD excluded yields a 2015 adjusted annual income of \$18,921.40. This amount produces an annual child support payment of \$3,784.28, or \$315 per month.²⁷ Arrears for the period of time in 2015 that Ms. Y had custody of Z should be set at this amount.

As noted above, support calculations in shared custody situations are determined using the divided custody formula, which requires calculation of each parent's theoretical support obligation, and then use of both calculations to determine the obligor's actual obligation.²⁸ Accordingly, arrears for the period of time in 2015 that the parties shared custody should be calculated under the shared custody formula, using this amount, rather than the \$345 figure proposed by CSSD. When the calculations in CSSD's Exhibit 16 are thusly modified, Mr. T's monthly support obligation is reduced to \$67.38 per month.²⁹

C. Support Obligation for 2016 – arrears and ongoing

Both for setting pre-order arrears, and for setting ongoing support, it is first necessary to determine Mr. T's 2016 income. Here, the factual record is complicated by

²⁶ 15 AAC 125.030(e) (emphasis added).

²⁷ See Attachment A.

²⁸ Civil Rule 90.3(b)(2).

²⁹ This amount was derived by using \$315 for Line 1B. Lines 2 and 3 are unchanged. Line 4 – now \$315 x 68% -- then becomes \$214.20. Line 5, the difference between lines 3 and 4, becomes \$44.92. Line 6, which multiplies line 5 by 1.5, is \$67.38, and is the correct monthly support amount.

Mr. T's incarceration during the first quarter of 2015. A period of short-term incarceration is viewed as temporary and does not typically justify modification of a parent's support obligation. But CSSD's proposed revised calculation takes a factual leap that does not appear otherwise supported in the record.

The evidence is that Mr. T earns most of his money in the summer, and far less in the winter months. Because of the seasonal nature of his job, Mr. T earns very little during the winter months. On this record, I cannot accept CSSD's premise that in 2016 Mr. T will earn 25% more than he did in 2015. To the contrary, the evidence strongly suggests that Mr. T will earn roughly the same in 2016 as he did in 2015. On this record, there is no evidence to support a finding of a material change in circumstances between 2015 and 2016.

Accordingly, Mr. T's 2016 pre-order arrears, and his ongoing support obligation, are set at \$315 per month.³⁰

D. Mr. T is not entitled to a hardship variance.

To the extent to which Mr. T's appeal seeks a variance from the support amount set by the statutory formula, he has not shown that he is entitled to such a variance. 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.³¹ 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" or that "unusual circumstances make application of the formula unjust."³² It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, 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).³³

The law also provides that Mr. T's duty to financially support Z takes precedence over virtually all other financial obligations. In this case, both Mr. T and Ms. Y are stretched somewhat thin, financially. It would work an injustice to Ms. Y and to Z to reduce Mr. T's support obligation beneath what is provided for by Rule 90.3(a). Mr. T has not met his very high burden to show good cause for such a variance.

³⁰ See 15 AAC 125.105(e) (arrears); 15 AAC 125.030(a); Alaska Rule Civil Procedure, Commentary III.E. (ongoing support obligation).

³¹ Civil Rule 90.3, Commentary VI.B.

³² Civil Rule 90.3(c).

³³ See Civil Rule 90.3, Commentary VI.E.1.

IV. Conclusion

Mr. T met his burden of showing that his monthly child support obligation was calculated incorrectly. That obligation, both as to arrears and as to ongoing support, is modified through this decision and order. No hardship variance is granted.

V. Child Support Order

1. L C. T is liable for child support arrears in the amount of \$315 per month for one child for the month of February 2015.
2. L C. T is liable for child support arrears in the amount of \$67.38 per month for one child for the months of March 2015 through August 2015.
3. L C. T is liable for child support arrears in the amount of \$315 per month for one child for the months of September 2015 through January 2016.
4. L C. T is liable for ongoing child support in the amount of \$315 per month for one child effective February 1, 2016 and ongoing.
5. All other terms of the Amended Administrative Child Support and Medical Support Order dated January 12, 2016 remain in full force and effect.

Dated: March 30, 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 13th day of April, 2016.

By: Signed
 Signature
 Andrew M. Lebo
 Name
Administrative Law Judge
 Title

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