

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

In the Matter of	)	
	)	OAH No. 16-0065-CSS
T L. J	)	Agency No. 001204482
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is T L. J's appeal of an order issued by the Alaska Child Support Services Division of the Department of Revenue (division). That order established her ongoing child support obligation and arrears for her daughter F L.

A telephonic hearing was held on February 22, 2016. Ms. J represented herself at the hearing. D L, the custodial parent, represented himself. Delinda Cain represented the division. The record closed at the end of the hearing.

**II. Facts**

D L applied for establishment of a support order for F L on December 11, 2014.<sup>1</sup> He and Ms. J were married in 2011 in Village Z, before F was born, and were separated and in the process of divorcing at the time of the application.<sup>2</sup> They were divorced on August 27, 2015, but the court did not establish a child support order.<sup>3</sup> The parties agreed that the support award would be ordered administratively by the division.<sup>4</sup> The court awarded the parties joint legal custody, but awarded primary physical custody to Mr. L.<sup>5</sup>

The division sent Ms. J an administrative order to provide financial and medical information on September 11, 2015. From September, 2014 through June, 2015, Ms. J worked for Facility Y, earning an average of \$2,996 a month.<sup>6</sup> She was terminated from that job.<sup>7</sup> She started working for Facility X in Village W as a temporary on-call office worker in October, 2015, a position paying substantially less than the job at Facility Y.<sup>8</sup> At the time of the hearing, she was not working as she was on maternity leave.<sup>9</sup>

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<sup>1</sup> Division Exhibit 1 at 1.  
<sup>2</sup> Division Exhibit 1 at 2.  
<sup>3</sup> Division Exhibit 3 at 1.  
<sup>4</sup> Division Exhibit 3 at 5.  
<sup>5</sup> Division Exhibit 3 at 3.  
<sup>6</sup> Division Exhibit 2; Division Exhibit 7.  
<sup>7</sup> Division Exhibit 8 at 20 - 22.  
<sup>8</sup> Division Exhibit 8 at 4 - 5, 10; Division Exhibit 11.  
<sup>9</sup> Testimony of J.

### III. Discussion

The division has established Ms. J's ongoing child support obligation at \$50 a month for one child.<sup>10</sup> Ms. J's arrears were calculated based on actual income figures for the months of January - June, 2015, resulting in an obligation of \$399 a month. For July - November, 2015, her arrears were set at \$50 a month.

Ms. J argues that the ongoing child support obligation and arrears established in the division's November 12, 2015 order will impose a hardship on her and the children in her household. The division does not have discretion to set an amount below \$50 a month; this is the minimum child support amount that may be ordered.<sup>11</sup> However, the division set Ms. J's child support obligation well above that minimum figure for January, 2015 through June, 2015, and Ms. J has established by clear and convincing evidence that unusual circumstances exist in this case which will result in manifest injustice if the support award for this six-month period is not varied.

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 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."<sup>12</sup> The presence of "unusual circumstances" in a particular case also may be sufficient to establish "good cause" for a variation in the support award.<sup>13</sup> 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 primary custody provision of Civil Rule 90.3(a).<sup>14</sup>

Ms. J's circumstances changed considerably between the time the initial application for child support services was filed and the time the child support order was issued. Here, the application for child support services was received in December, 2014, while the divorce proceedings were underway. Although the division got verification of income from Ms. J's employer in January, 2015, it apparently put further action on the application on hold

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<sup>10</sup> Division Exhibit 6 at 1.

<sup>11</sup> Civil Rule 90.3(c)(3); 15 AAC 125.075(d).

<sup>12</sup> Civil Rule 90.3(c).

<sup>13</sup> Civil Rule 90.3(c)(1).

<sup>14</sup> See Civil Rule 90.3, Commentary VI.E.1.

pending the outcome of the divorce proceeding.<sup>15</sup> The division did not request financial and medical insurance information from the parties until September, 2015.<sup>16</sup> Ms. J responded promptly with a child support guidelines affidavit reflecting her changed circumstances.<sup>17</sup> Although she does not challenge the accuracy of the income figures for January, 2015 - June, 2015, she argues that it will be a hardship for her to pay the ongoing obligation and the arrears.

At the time of the hearing, Ms. J was not working because she had just had a baby and was on maternity leave. She is now supporting both her older daughter and a subsequent child in her home. When Ms. J goes back to work at Facility X, she will be earning considerably less than she had been earning at Facility Y.<sup>18</sup> Ms. J is currently using child support payments she receives for her older daughter and funds from her retirement account to pay the bills, but is not able to meet all of her financial obligations (including student loan payments) using these sources.<sup>19</sup> She is seeking public assistance in the form of Medicaid for her family.<sup>20</sup>

The custodial parent is not currently experiencing comparable financial pressures. At the hearing, when discussing the amount Ms. J was required to pay towards arrears in addition to the \$50 a month in ongoing support, Mr. L stated that "\$246 [a month going forward] isn't going to make a difference to F. It's not going to make a difference to me. Our bills are paid for."<sup>21</sup> However, he also stated that he would like to receive the full amount of arrears assessed by the division. Mr. L reported that he had never received public assistance.<sup>22</sup> He testified that he has a good job with an oil company, and an above-average income.

Ms. J's financial circumstances have changed considerably since the date the application for child support services was filed. While her earnings have decreased, the number of children in her household and costs of supporting them have increased. Paying arrearages based on her previous earnings will impose a hardship on the children currently

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<sup>15</sup> Division Exhibit 2.

<sup>16</sup> Division Exhibit 4.

<sup>17</sup> Division Exhibit 5.

<sup>18</sup> Division Exhibit 8 at 4 - 5, 10; Division Exhibit 11.

<sup>19</sup> Division Exhibit 5 at 3; Exhibit 8 at 16 - 17; Testimony of J.

<sup>20</sup> Division Exhibit 8 at 10.

<sup>21</sup> Testimony of L.

<sup>22</sup> Division Exhibit 1 at 1.

in her household, whereas lowering the amount of the arrearages will have no impact on the custodial parent's ability to care for F.

Finally, the commentary to Civil Rule 90.3 states that when establishing support retroactively, the amount calculated should be varied when it is necessary to do so in order to prevent unfairness that could result. In these cases it is appropriate to consider all relevant circumstances to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a). Civil Rule 90.3, Commentary VI.E.1. provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-2 (Alaska 1996). However, in some circumstances, unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child.

In this case, several months passed between the date of the application for services and the date of the division's order to provide financial and medical information (although the division acted promptly after the divorce decree was signed).

Any one of these circumstances in isolation may not be sufficient to justify an exception to the rule, however, taken together, they constitute clear and convincing evidence that manifest injustice will result if the award of child support arrearages for the period January, 2015 - June, 2015 is not varied to reflect Ms. J's current circumstances. Because Ms. J is appealing the initial order establishing her child support obligation for this period, the department has the authority under Civil Rule 90.3(c) to vary the amount calculated under Civil Rule 90.3(a). This is not a retroactive modification of child support. Ms. J's child support obligation for the months of January, 2015 through June, 2015, should be reduced from \$399 a month to \$50 a month.

If repayment of the adjusted arrears presents a hardship, Ms. J may also request that the division reduce withholding from her wages.

#### **IV. Conclusion**

There was a request for a variance under Civil Rule 90.3(c) in this appeal, and it was granted. The division correctly established Ms. J's child support obligation for the period July, 2015 forward at \$50 a month. However, Ms. J met her burden of establishing by clear

and convincing evidence that manifest injustice would result if her support obligation for F for the period January, 2015 through June, 2015, is not reduced. Ms. J's support obligation for January, 2015 through June, 2015, should also be set at \$50 a month.

**V. Child Support Order**

1. T L. J is liable for child support in the amount of \$50 a month for one child effective April 1, 2016 and ongoing.
2. T L. J is liable for arrears in the amount of \$50 a month for the months of January, 2015 through March, 2016.
3. All other terms of the Administrative Child Support and Medical Support Order dated November 12, 2015, remain in full force and effect.

Dated: March 2, 2016.

*Signed* \_\_\_\_\_  
Kathryn L. Kurtz  
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 24th day of March, 2016.

By: *Signed* \_\_\_\_\_  
Signature  
Jerry Burnett \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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