

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

In the Matter of: )  
 ) OAH No. 16-0193-CSS  
D M. P ) CSSD No. 001160915  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, D M. P, appeals a Modified Administrative Child Support and Medical Support Order, issued by the Child Support Services Division (CSSD) on February 12, 2016, which substantially increased his monthly child support obligation.<sup>1</sup> Mr. P asserts that his monthly child support payment should not be increased to the extent it was raised by CSSD because, with his current income, he does not have enough money, after necessary expenses, to pay the increased support obligation, and it would thus create significant financial hardship for him.<sup>2</sup>

This decision concludes that Mr. P's monthly child support payment was correctly calculated by CSSD. Although Mr. P requested a reduction in that amount based on financial hardship, the evidence obtained at hearing indicates that both parties are equally stretched financially, and that setting Mr. P's support obligation at the amount arrived at under Civil Rule 90.3(a) will not result in manifest injustice. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated February 12, 2016 is affirmed. Mr. P's child support obligation is set at \$725.00 per month effective January 1, 2016.

**II. Facts**

**A. Material Facts**

Mr. P and Ms. N have one child, T, who is currently six years old.<sup>3</sup> Ms. N has had primary custody of T since 2014 or before.<sup>4</sup>

Mr. P has four children: an 18-year-old daughter, Z, who lives in the Dominican Republic; T, who lives with her mother; and younger sons K (age six) and L (age four), who live with their mother.<sup>5</sup> He is employed full time; he works more hours in the winter and less in the summer, but averages about eight hours per day.<sup>6</sup> His pay rate is \$20.00 per hour.<sup>7</sup>

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<sup>1</sup> Ex. 5.

<sup>2</sup> Ex. 6 p. 2; P testimony.

<sup>3</sup> Ex. 5 p. 3; undisputed hearing testimony. T will turn seven next month, making her slightly older than K. *Id.*

<sup>4</sup> Ex. 1 p. 1.

<sup>5</sup> P testimony. Mr. P has a separate child support order for his two youngest children (Ex. 6 p. 2). He also

Mr. P lives with a roommate who works, and his elderly mother, who does not work and whom he supports.<sup>8</sup> His half of the monthly rent is \$800.00. In addition to rent, Mr. P has the following monthly expenses: child support for his two youngest children (\$676.00); gas heat (\$60.00 - \$200.00 per month); electricity (\$80.00 - \$90.00 per month); cell phone service (\$75.00 per month); and internet service (\$65.00 per month). He drives a 1999 Nissan Pathfinder, purchased in 2004, which is paid off. His car insurance costs \$98.00 per month, gasoline averages \$160.00 per month, and maintenance and repair costs average \$75.00 per month. He spends about \$600.00 per month on food consumed at home, and another \$300.00 per month eating at restaurants. He spends about \$40.00 per month on clothing and personal care items, \$20.00 per month on alcoholic beverages, \$35.00 a month for health insurance for himself, and \$60.00 per month on health insurance for T. He has debts for medical care for himself and his mother, but is currently unable to make payments on those debts.

Ms. N's household includes T and one older daughter (age 11).<sup>9</sup> Her mother also lives with her about one-third of the time. Ms. N is employed part time by the same employer that Mr. P works for; she earns from \$1,000 - \$1,600 per month from this job, depending on the number of hours worked. Ms. N also works a second part-time job, where she earns about \$1,000.00 per month.

Ms. N owns a mobile home situated in a mobile home park.<sup>10</sup> Her space rent is \$400.00 per month, but she must often pay an additional \$60.00 late fee because she cannot always pay her rent on time. Ms. N has the following additional monthly housing expenses: gas heat (\$100.00 - \$330.00); electricity (\$70.00); telephone and internet service (\$230.00); and cable television (\$50.00). She owns a 2005 Chevrolet Trailblazer, purchased in 2014, on which she owes \$2,000.00. Her monthly vehicle costs are her car payment (\$338.00); car insurance (\$155.00); gasoline (\$240.00); and vehicle maintenance (\$40.00). Her other monthly expenses are: child care (\$320.00 per month); food (\$600.00 at home, \$200.00 at restaurants); clothing and personal care items (\$300.00 per month); entertainment (\$100.00); renter's insurance (\$33.00);

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sends money to Z periodically, although no formal child support order requires this (P testimony).

<sup>6</sup> P testimony.

<sup>7</sup> P testimony. Mr. P's annual income is discussed in further detail in Section III(D), below.

<sup>8</sup> All factual findings in this paragraph are based on Mr. P's hearing testimony unless otherwise stated.

<sup>9</sup> All factual findings in this paragraph are based on Ms. N's hearing testimony unless otherwise stated.

<sup>10</sup> All factual findings in this paragraph are based on Ms. N's hearing testimony unless otherwise stated.

and an \$8,000.00 medical debt owed to Providence Hospital, on which she pays \$240.00 per month.

**B. Relevant Procedural History**

At some time before 2013, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. P's child support obligation for T. On April 1, 2014, a Consent Order was issued by administrative law judge (ALJ) Kay L. Howard which set Mr. P's monthly support obligation at \$450.00 per month based on an agreement reached by the parties.<sup>11</sup>

The current case was initiated when on December 1, 2015, Ms. N submitted a child support modification request to CSSD.<sup>12</sup> CSSD notified Mr. P of the modification request on December 10, 2015, and requested updated financial information from both parties.<sup>13</sup> Mr. P provided CSSD with copies of his income tax returns and pay statements on January 20, 2016.<sup>14</sup>

On February 12, 2016, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased Mr. P's monthly child support obligation to \$725.00 effective January 1, 2016.<sup>15</sup> Mr. P appealed CSSD's decision on February 26, 2016.<sup>16</sup>

Mr. P's hearing was held on March 23 and April 1, 2016. Mr. P participated in the hearings by phone, represented himself, and testified on his own behalf. Ms. N also participated in the hearing by phone, represented herself, and testified. Child Support Specialist Brandi Estes attended the hearing and represented CSSD. A Spanish language interpreter provided translation services. The record closed at the end of the hearing on April 1, 2016.

**III. Discussion**

**A. The Burden of Proof is on Mr. P as the Appellant**

As the person who filed the appeal in this case, Mr. P has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Modified Administrative Child Support and Medical Support Order of February 12, 2016 is incorrect.<sup>17</sup>

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<sup>11</sup> Ex. 1. The monthly child support payment that the parties agreed to in 2014 was significantly less than the support obligation would have been had there been no settlement, and had the amount been calculated under Civil Rule 90.3(a). Therefore, once Ms. N requested modification, it increased the support amount much more than would have been the case if Mr. P's support obligation had been set under Civil Rule 90.3(a) in 2014.

<sup>12</sup> Ex. 2.

<sup>13</sup> Ex. 3.

<sup>14</sup> Ex. 4.

<sup>15</sup> Ex. 5.

<sup>16</sup> Ex. 6.

<sup>17</sup> 15 AAC 05.030(h).

**B. *The Threshold Test for Modification is Satisfied Here***

Under Civil Rule 90.3, a child support award may be modified upon a showing of a material change of circumstances.<sup>18</sup> A material change of circumstances will be presumed if the monthly child support payment, as calculated under Civil Rule 90.3, is more than 15 percent greater or less than the previous child support order.<sup>19</sup> The monthly child support obligation of \$725.00, arrived at by CSSD and affirmed in this decision, is more than 15 percent greater than the \$450.00 per month obligation previously due under the April 2014 Consent Order. Accordingly, CSSD correctly determined that Mr. P's support obligation should be modified.

**C. *Rules for Determining the Monthly Support Obligation***

A parent is obligated both by statute and at common law to support his or her children.<sup>20</sup> In cases where child support is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.<sup>21</sup>

In Alaska, the rules for calculating child support are established primarily in Civil Rule 90.3. Under Civil Rule 90.3(a)(1), where (as here) the custodial parent has primary physical custody of the child, the first step in calculating child support is to determine the non-custodial parent's total income from all sources. The second step is to subtract any applicable deductions from the non-custodial parent's gross income; the resulting number is referred to as adjusted income. The third step is to multiply the non-custodial parent's adjusted income by the percentage specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.<sup>22</sup> In this case there is one child for whom support must be paid. In order to calculate a child support award for one child, the non-custodial parent's adjusted annual income is multiplied by 20 percent.<sup>23</sup> The annual child support obligation is then divided by twelve to obtain the monthly child support payment.

Under Civil Rule 90.3, a parent's current/ongoing child support obligation should be based on the amount the parent can be expected to earn during the period for which the support is being paid.<sup>24</sup> This determination is necessarily somewhat speculative because the relevant

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<sup>18</sup> Civil Rule 90.3(h)(1).

<sup>19</sup> Civil Rule 90.3(h)(1).

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

<sup>21</sup> 15 AAC 125.10(a)(1)-(2).

<sup>22</sup> Civil Rule 90.3(a)(2).

<sup>23</sup> Civil Rule 90.3(a)(2)(A).

<sup>24</sup> Civil Rule 90.3, Commentary, Section III(E).

income figure is expected future income.<sup>25</sup> In cases where the obligor parent's income is relatively steady, this calculation can be based on the obligor parent's income from the previous year. If a person has erratic income from year to year, Civil Rule 90.3 allows child support to be based on an average of several years' income.<sup>26</sup> The facts of the case generally determine the approach to be used.<sup>27</sup>

The earnings information which CSSD obtained from the Department of Labor and Workforce Development (DOL) documents Mr. P's earned income for the three-year period from the first quarter of 2013 through the fourth quarter of 2015.<sup>28</sup> At hearing, Mr. P agreed that the income figures which CSSD obtained from DOL were accurate.

CSSD based its support calculation on Mr. P's 2015 gross income of \$55,498.26.<sup>29</sup> Because this is the most recent annual income period, and because there is no evidence that Mr. P's income has decreased significantly during the first four months of 2016, CSSD was correct to base its child support calculations on Mr. P's 2015 income. His monthly child support obligation is \$725.00 per month based on Civil Rule 90.3(a). However, Mr. P has requested that his monthly child support obligation, as calculated above, be reduced based on financial hardship under Civil Rule 90.3(c). This request for a hardship reduction is analyzed below.

***D. The Evidence does not Justify a Hardship Reduction Under Civil Rule 90.3(c)***

Under Civil Rule 90.3(c), the parent obligated to pay child support may obtain a reduction in the amount calculated under Rule 90.3(a) (discussed above) only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the obligor parent must prove by clear and convincing evidence that "manifest injustice would result if the support award [is] not varied." In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.<sup>30</sup>

The evidence in this case indicates that both parties are currently doing their best to bring in income, and that neither party is spending money unnecessarily. It is clear that paying the increased child support obligation, in conjunction with Mr. P's other expenses, will be financially

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<sup>25</sup> Civil Rule 90.3, Commentary, Section III(E).

<sup>26</sup> Civil Rule 90.3, Commentary, Section III(E); *see also Pugil v. Cogar*, 811 P.2d 1062 (Alaska 1991); *Zimin v. Zimin*, 837 P.2d 118 (Alaska 1992); *Hill v. Bloom*, 235 P.3d 215 (Alaska 2010).

<sup>27</sup> *See Byers v. Ovitt*, 133 P.3d 676, 683 (Alaska 2006) (noting that a court may determine a party's income by various means).

<sup>28</sup> Ex. 7 p. 1. Mr. P did not dispute these income figures.

<sup>29</sup> Ex. 6 p. 7.

<sup>30</sup> *See* Civil Rule 90.3, Official Commentary at Section VI(E)(1).

burdensome for Mr. P. However, it is equally clear Ms. N's income is *significantly less* than Mr. P's, and that *doing without* the increased child support would be at least equally financially burdensome to *her*. After weighing the hardship to both parties, it cannot be said that manifest injustice will result by requiring that Mr. P pay the modified child support amount of \$725.00 per month arrived at under Civil Rule 90.3(a). Accordingly, Mr. P's request for a reduction of his child support obligation, based on financial hardship, must be denied.

***E. Mr. P is not Entitled to a Credit for Support Paid for his Younger Children***

Civil Rule 90.3(a)(1)(C) allows the parent paying child support to subtract, from his or her adjusted annual income, child support paid on behalf of children “from *prior relationships* which are required by other court or administrative proceedings and [are] actually paid” (emphasis added). It is undisputed that Mr. P has two minor children (in addition to T) who live with their mother, and that he pays child support for those two children.<sup>31</sup> However, Mr. P's testimony, and the statements of CSSD's hearing representative, indicate that the older of these two children is slightly younger than T, who will turn seven next month. Accordingly, these other two children are children of a *subsequent* relationship rather than a *prior* relationship.

***F. Mr. P is Entitled to a Credit for T's Medical Insurance***

Civil Rule 90.3(d)(1)(B) allows a parent's child support obligation to be decreased “by the amount of the obligee's portion of health insurance payments ordered by the court and actually paid by the obligor.” Mr. P provided evidence (which was not disputed) that T has been covered by his union's health insurance trust, as to medical expenses and prescription drug costs, since January 1, 2016.<sup>32</sup> Accordingly, Mr. P is entitled to an offset for the payments he actually makes toward T's medical insurance. Mr. P has not yet presented evidence of the *specific amount* he pays toward T's health insurance each month, so no deduction can be implemented at this time. When Mr. P provides this figure to CSSD, CSSD will implement the deduction itself administratively.<sup>33</sup>

**IV. Conclusion**

CSSD's Modified Administrative Child Support and Medical Support Order dated February 12, 2016 correctly determined Mr. P's monthly child support obligation under Civil Rule 90.3(a). The additional evidence obtained through the hearing process failed to

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<sup>31</sup> Ex. 6 p. 2.

<sup>32</sup> Ex. 6 p. 3.

<sup>33</sup> Ex. 5 p. 4; CSSD representative's statements at hearing.

demonstrate that manifest injustice will result if Mr. P's \$725.00 per month support obligation under Civil Rule 90.3(a) is not reduced pursuant to Civil Rule 90.3(c). Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order of February 12, 2016 is affirmed.

**V. Child Support Order**

- CSSD's Modified Administrative Child and Medical Support Order dated February 12, 2016 is affirmed and remains in full force and effect.
- Mr. P is liable for child support for T in the amount of \$725.00 per month from January 1, 2016 and ongoing.

DATED this 21st day of April, 2016.

*Signed*  
\_\_\_\_\_  
Jay Durych  
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of May, 2016.

By: *Signed*  
\_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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