

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

In the Matter of:)	
)	OAH No. 16-0378-CSS
S L. E, JR.)	CSSD No. 001117764
_____)	

DECISION AND ORDER

I. Introduction

S E, Jr. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 2, 2016. The order increased Mr. E’s ongoing child support obligation for his daughter B from \$574 to \$706 per month, effective January 1, 2016. Mr. E appealed.

After careful review of the record and due deliberation, CSSD’s modified support order is affirmed. Mr. E did not meet his burden to show that CSSD made a mistake in modifying his ongoing obligation, and he did not establish by clear and convincing evidence that manifest injustice would result if the modified support amount is not reduced.

II. Factual and Procedural History¹

Mr. E and K L are the parents of B, born in 2001. B lives with Ms. L. Mr. E’s ongoing child support for B was set at \$574 per month in October 2006.² Mr. E also has a separate child support order for a younger child, G, who was born in 2007 and who has a different mother.³ Mr. E’s ongoing support obligation for G is \$239 per month.⁴

A. Procedural Background

Ms. L requested a modification review of Mr. E’s support obligation for B on December 23, 2015.⁵ On December 31, 2015, CSSD served the parties with a Notice of Petition for Modification of Administrative Support Order.⁶ CSSD received some income information from Mr. E’s employer.⁷ It also reviewed an Alaska Department of Labor and Workforce Development database that summarized Mr. E’s income as reported by his employer. The

¹ Unless specified otherwise, the factual background is based on the testimony of S E, Jr.
² Ex. 1.
³ Ex. 9.
⁴ Claimant Ex. 1.
⁵ Ex. 2.
⁶ Ex. 3.
⁷ Exs. 4, 5, 7.

database indicated that Mr. E's 2015 wage income from his employer was \$50,886.70.⁸

CSSD issued a Modified Administrative Child Support and Medical Support Order on March 2, 2016.⁹ It relied on Mr. E's 2015 income of \$50,886.70, plus his 2015 Alaska PFD, to calculate his total income. After allowable deductions, this income resulted in a child support obligation of \$706 per month for one child.

Mr. E appealed.¹⁰ The hearing was held May 3, 2016. John Pharr appeared and represented Mr. E. Child Support Specialist Kimberly Sledgister represented CSSD. Ms. L did not participate; however, the record includes Ms. L's financial information, which she submitted in response to the Notice of Petition for Modification.¹¹ The hearing was recorded. The record closed at the end of the hearing.

B. Material Facts

Mr. E did not challenge the income information that CSSD used to calculate his modified support obligation. He argued that CSSD failed take his obligation for G into account when it increased his ongoing support for B. He requested a variance of that obligation based on financial hardship, given his other living expenses and his duty to support his younger child.

At the hearing, Mr. E provided more information about his household finances. He lives with his father in a home that his father leases. The monthly rent is \$1450, but Mr. E's share is typically \$500. He pays monthly bills for electricity, \$110, internet, \$135, and cell phone, \$120.¹² His father picks up various other expenses, including telephone and cable t.v. costs. Mr. E's other monthly expenses include \$600 for food; a \$150 payment on his 2001 GMC truck; \$120 for gas; and \$100 for health insurance.¹³ Mr. E's expense worksheet indicated that he also has a \$150 expense for home insurance and \$120 for personal care, but it is not entirely clear whether these are monthly or annual expenses. For purposes of this appeal, they are accepted as monthly expenses because, even as such, they do not change the outcome of the case.

⁸ Ex. 10.

⁹ Ex. 8.

¹⁰ Ex. 9.

¹¹ Ex. 6.

¹² See Claimant Ex. 2.

¹³ Claimant Ex. 2.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. The Commentary to Civil Rule 90.3 explains that the rule is designed to approximate the amount a non-custodial parent would have spent on the child if the family was intact. It operates on the principal that, as the income available to both parents increases, the amount available to support the child also will increase.¹⁵

A child support order may be modified upon a showing of “good cause and material change in circumstances.”¹⁶ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that “material change in circumstances” has been established and the order may be modified. Mr. E’s child support was previously set at \$574 per month, so a revised calculation that is at least \$86.10 higher, or \$660.10 or more, would be sufficient to warrant modification in this case.¹⁷ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so the modification in this case is effective January 1, 2016.¹⁸

In a child support matter, the person who files an appeal bears the burden of proof.¹⁹ Mr. E filed the appeal, so he must prove by a preponderance of the evidence that the March 2, 2016 Modified Administrative Child Support and Medical Support Order is incorrect.²⁰

A. *Child Support Calculation*

Under Civil Rule 90.3(a), a parent’s 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.²¹ This amount is to be calculated based on his or her “total income from all sources,” minus allowable deductions that are set out in the Civil Rule. In cases where the obligor parent's

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁵ Civil Rule 90.3, Commentary, II.

¹⁶ AS 25.27.190(e).

¹⁷ $\$574 \times 15\% = \86.10 .

¹⁸ 15 AAC 125.321(d).

¹⁹ 15 AAC 05.030(h).

²⁰ 2 AAC 64.290(e).

income is relatively steady, as in this case, the determination of total income from all sources can be based on the parent's income from the previous year. For this reason, CSSD relied on Mr. E's 2015 wage income, plus his 2015 Alaska PFD, to calculate his total income from all sources.

Mr. E does not challenge the information that CSSD used to determine his income. He requests a reduction of his support obligation for B because he also must pay to support his younger child. He wrote: "although not a 'prior child,' the child support payment for G should be taken into account on the child support obligation for K [sic]."²²

In determining a non-custodial parent's adjusted annual income, Civil Rule 90.3(a) allows a deduction for child support payments "arising from *prior* relationships," if certain requirements are satisfied.²³ This deduction could apply if Mr. E had a child older than B, for whom he paid child support pursuant to a court or administrative support order. However, it is not applicable in this case because G is younger than B.²⁴

The law is well-established on this issue. It requires rejection of Mr. E's request to factor in a younger child's needs when calculating his obligation to an older child, absent a finding of unusual circumstances.

B. Unusual Circumstances

Child support determinations calculated under Civil Rule 90.3 from a non-custodial parent'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. 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."²⁵

In general, Civil Rule 90.3 provides that a parent's support obligation to his older children should not be reduced because of the parent's support obligation for *younger* or

²¹ Civil Rule 90.3, Commentary, Section III(E).

²² Ex. 9. Mr. E's support obligation is to B, but Ms. L is the custodial parent.

²³ Civil Rule 90.3(a)(1)(C) (emphasis added).

²⁴ B is a "prior child" with respect to G; therefore, Mr. E's support obligation for her can be taken into account in setting his obligation for G.

²⁵ Civil Rule 90.3(c). In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child. However, because Mr. E did not present sufficient evidence to support his hardship claim, it is unnecessary to review Ms. L's financial situation.

“subsequent” children.²⁶ The older children are given priority. There is an exception to this general rule for cases in which failure to reduce the support obligation would cause “substantial hardship” to the subsequent children.²⁷ In determining substantial hardship, the Alaska Supreme Court has repeatedly stated that a parent should not be relieved of the obligation to support his or her prior children except under the most extreme circumstances.²⁸

Even if one accepts that all of the expenses Mr. E noted on his expense worksheet are monthly obligations, his monthly expenses total roughly \$2105. His child support obligations for both children are \$945 per month. At most, this brings his total monthly expenses to \$3050. Mr. E’s gross monthly wages are \$4240.55, and he receives PFD income.²⁹ He also testified that, after taxes, his monthly net income is roughly \$3000. This evidence does not indicate that Mr. E’s modified obligation for B will result in substantial hardship to G, or that manifest injustice will result if the modified amount is not further reduced.

Based on the evidence in the record, Mr. E earns an adequate income to pay his support obligations for both of his children and to provide for his own needs. His housing expenses are relatively low, since his father assists with those costs. However, some of his other living expenses include spending for discretionary lifestyle choices, which could be trimmed if Mr. E needs additional resources to support his children.

While paying \$706 per month in ongoing child support for B may require Mr. E to make some financial adjustments, his duty to pay the correct percentage of his income toward B’s support takes precedence over other financial obligations. He has not established that his modified obligation will result in substantial hardship, or that there is other good cause to reduce his ongoing support obligation to his oldest child.

IV. Conclusion

Mr. E’s modified support obligation for B was calculated under Civil Rule 90.3(a) based on his actual income. Mr. E did not meet his burden to show that CSSD made a mistake in calculating his ongoing obligation, and he did not establish by clear and convincing evidence that

²⁶ Civil Rule 90.3, Commentary VI.B.2.

²⁷ *Id.*

²⁸ *Reilly v. Northrup*, 314 P.3d 1206, 1215 (Alaska 2013); *Kestner v. Clark*, 182 P.3d 1117, 1123 (Alaska 2008).

²⁹ $\$50,886.70/12 = \4240.55

manifest injustice would result if the modified support amount is not reduced. Accordingly, the Modified Administrative Child Support and Medical Support Order dated March 2, 2016 is affirmed. No variance under Civil Rule 90.3(c) was granted.

V. Child Support Order

1. The Modified Administrative Child Support and Medical Support Order dated March 2, 2016 is affirmed and remains in full force and effect. CSSD properly modified Mr. E's ongoing obligation for B to \$706 per month, effective January 1, 2016.

DATED this 10th day of May 2016.

By: Signed
Kathryn A. Swiderski
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 25th day of May, 2016.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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