

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

In the Matter of: )  
 )  
 M K. L ) OAH No. 16-0461-CSS  
 ) CSSD No. 001142170  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

M L appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on April 1, 2016. The modified support order increased his child support obligation for his daughter T from \$298 to \$409 per month. Mr. L asserted that his monthly child support payment should have decreased, not increased, and he cannot afford even the prior support amount, after necessary expenses and payments on support orders for three other children. This decision concludes that CSSD properly calculated Mr. L's ongoing support obligation for T under Civil Rule 90.3(a); however, Mr. L is entitled to a hardship variance of that obligation under Civil Rule 90.3(c). Mr. L's ongoing child support obligation is adjusted to \$306.00 per month, effective March 1, 2016.

**II. Facts**

*A. Material Facts*<sup>1</sup>

Mr. L has four children. The two oldest are at least 18 years old, and he no longer has an ongoing obligation for their support. However, he has substantial arrears balances on their cases. His arrears for his oldest child are roughly \$83,000; this debt is owed in a different state. His arrears for the second child also are significant, though Mr. L did not know the total, and it too is owed in a different state. T, 11, is Mr. L's third child. She lives in Alaska with custodian U Z, who appears to be a non-relative care provider. Mr. L's youngest child, 10, lives in Oregon. Mr. L's ongoing support amount for that child is \$489 per month.

Mr. L currently resides in Tacoma, Washington, where he works a full-time job as a forklift operator. He earns \$14 per hour. He is still relatively new to the job, so he has not yet qualified for leave benefits or the company health plan, but he expects to qualify in the future. Prior to starting his current position, Mr. L was a temporary worker at the same company.

Based on his \$14 hourly pay, Mr. L's expected 2016 gross income totals \$29,120.<sup>2</sup> This

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<sup>1</sup> Unless noted otherwise, the material facts are based on the testimony of M L.

income falls within the range set by Mr. L's recent earning history. He earned \$36,326 in 2013, and \$19,496 in 2015.<sup>3</sup> There is conflicting evidence regarding his 2014 income. Federal Department of Labor data indicates he earned \$26,361, and Mr. L's tax return indicates he earned 21,933.<sup>4</sup> It is not necessary to resolve the conflict, since both figures support the general proposition that Mr. L's expected 2016 income is reasonable in light of his earnings over the past several years.

While Mr. L's expected gross income in 2016 is \$29,120, his net pay is substantially less than that. In addition to taxes and other mandatory expenses, deductions are made from each of his paychecks to pay his ongoing child support obligations and to pay on his arrears. This significantly reduces his take-home pay.<sup>5</sup> In part for this reason, Mr. L could no longer afford his rent. He gave up his apartment and, at the time of the hearing, he was homeless and living in his car.

Because Mr. L currently does not have a home, and he pays no rent, a summary of his monthly expenses does not accurately reflect all appropriate expenses. He will not live in his car indefinitely, and a reasonable rental expense should be contemplated. Otherwise, his homelessness may affect his ability to work and to maintain his employment. As to other expenses, Mr. L spends \$310 per month on food; \$63 for a cell phone; \$65 on laundry and personal care; \$50 for blood pressure medication; and \$100 for entertainment or other expenses. He does not currently pay for health insurance, but he will have that expense once he is eligible through his job.

In 2015, Mr. L bought a 2008 Jeep vehicle, for which he owes \$13,128. His monthly car payment is \$378. Other monthly auto expenses include: gas, \$150; car maintenance, \$20; and auto insurance, \$100. Because he has not kept up with his child support obligations, Mr. L's driver's license has been suspended. To get his license reinstated, which he needs to do to get to his job, he owes \$940. He plans to pay a \$200 lump sum, and then will have \$50 monthly payments until the debt is paid.

Without including rent or the \$200 lump sum needed to reinstate his driver's license, Mr. L's current monthly expenses total \$1286. However, it is appropriate to account for a reasonable housing expense, as well as his cost to reinstate his driver's license. Assuming that \$550 per month would cover these expenses adequately, but not extravagantly, Mr. L's monthly expense total rises to \$1836.

Mr. L's expenses are not unreasonable. His only significant debts are his car loan and his

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<sup>2</sup> \$14 per hour x 2080 hours = \$29,120.

<sup>3</sup> Exhibit 3 at 1-2; Exhibit 7.

<sup>4</sup> See Exhibit 7, Exhibit 3 at 3-4.

<sup>5</sup> See, e.g., Exhibit 3 at 7 (34% deduction from gross pay for child support).

child support arrears. It is clear that Mr. L lives paycheck to paycheck, and he is not succeeding in keeping up with all of his financial obligations.

There is very little evidence in the record regarding U Z's household circumstances. It appears that Ms. Z is not related to T, but she has become her custodian and provides for her care. According to information available to CSSD, Ms. Z's 2015 gross earnings were \$60,681.70.<sup>6</sup>

*B. Procedural History*

On December 18, 2014, CSSD set Mr. L's child support amount for T at \$298 per month.<sup>7</sup> This amount was based on his income from a full-time job paying \$12 per hour, after allowable deductions, including the child support Mr. Ls paid for his older children.<sup>8</sup>

On January 22, 2016, Mr. L requested a modification review. On February 16, 2016, CSSD sent the parties a Notice of Petition for Modification of the existing support order.<sup>9</sup> Mr. L provided his income information, including his 2013 and 2014 IRS 1040 tax forms, and a paycheck summary of his wages between December 1, 2015 and February 12, 2016.<sup>10</sup> He also may have sent copies of his existing child support obligations, but those documents are not in the record and could not be located in CSSD's database.<sup>11</sup>

On April 1, 2016, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased Mr. L's monthly child support obligation to \$409, effective March 1, 2016.<sup>12</sup> It based this obligation on expected 2016 income of \$29,120, or \$14 per hour for a full-time position.<sup>13</sup> It did not allow a deduction for support paid to any of Mr. L's prior or subsequent children. Mr. L appealed. He asserted that his support obligation should be decreased, and he requested a reduction based on financial hardship.<sup>14</sup>

The hearing took place on May 12, 2016. Mr. L participated by telephone and represented himself. Ms. Z did not participate. Child Support Specialist Delinda Cain participated by telephone and represented CSSD. The record closed at the end of the hearing.

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<sup>6</sup> CSSD representation at hearing.

<sup>7</sup> Exhibit 1.

<sup>8</sup> Exhibit 1 at 6.

<sup>9</sup> Exhibit 2.

<sup>10</sup> Exhibit 3.

<sup>11</sup> CSSD representation at hearing.

<sup>12</sup> Exhibit 5.

<sup>13</sup> Exhibit 5 at 6.

<sup>14</sup> Exhibit 6.

### III. Discussion

As the person who filed the appeal in this case, Mr. L has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's April 1, 2016, Modified Administrative Child Support and Medical Support Order is incorrect.<sup>15</sup> He met his burden to show that his child support order should be adjusted.

#### A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> In Alaska, the rules for calculating child support are set by Civil Rule 90.3. That rule provides that an existing child support order may be modified upon a showing of "good cause and material change in circumstances."<sup>17</sup> 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. L's child support was set at \$278 per month in 2014. A revised child support calculation that is \$41.70 higher or lower would be sufficient to warrant modification in this case.<sup>18</sup>

Civil Rule 90.3(a) addresses situations involving primary physical custody. It bases the non-custodial parent's ongoing child support obligation on the amount the parent can be expected to earn during the period for which the support is being paid.<sup>19</sup> This determination is necessarily somewhat speculative because the relevant income figure is expected future income.<sup>20</sup> In this case, Mr. L's expected income in 2016 is not contested. It is based on his \$14 hourly rate for full-time work, which results in total earnings of \$29,120. Under the Civil Rule 90.3(a) formula, after mandatory deductions for taxes and Social Security, this income results in an ongoing support obligation of \$409 per month.<sup>21</sup>

Mr. L is no longer entitled to a deduction from his total income for the child support he paid for his oldest two children. Those children have emancipated, and Mr. L no longer has an ongoing support duty for them. His large arrears debt for their past-due support also does not justify a reduction of his ongoing support obligation for T.<sup>22</sup> In addition, absent a showing of substantial

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

<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>17</sup> AS 25.27.190(e).

<sup>18</sup>  $\$278 \times 15\% = \$41.70$ .

<sup>19</sup> Civil Rule 90.3, Commentary, Section III.E.

<sup>20</sup> *Id.*

<sup>21</sup> Exhibit 5 at 6.

<sup>22</sup> See Civil Rule 90.3, Commentary VI.B.4 (a parent's prior or subsequent debts, even if substantial, normally will not justify a reduction in support).

hardship to his youngest child, Mr. L is not entitled to a deduction from total income for the support he pays for that child. This is because the Civil Rule 90.3 formula prioritizes a non-custodial parent's ongoing obligation to his or her older children.<sup>23</sup>

Based on the evidence, CSSD properly calculated Mr. L's ongoing support obligation under Civil Rule 90.3(a) at \$409 per month, effective March 1, 2016 and ongoing. Mr. L argued that his support amount should be reduced because of financial hardship. This claim is addressed below.

*B. Variance Under Civil Rule 90.3(c)*

The primary issue in this appeal is whether Mr. L is entitled to a reduction of his child support obligation based on financial hardship, pursuant to Civil Rule 90.3(c). 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."<sup>24</sup> In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodian and the child.

Based on the evidence presented, Mr. L proved by clear and convincing evidence that manifest injustice would result if he is required to pay the full modified child support amount in his current circumstances. After federal income taxes and other mandatory deductions such as Social Security, Mr. L's 2016 adjusted annual income is expected to be \$24,510.56.<sup>25</sup> On a monthly basis, this translates to adjusted income of approximately \$2042.<sup>26</sup> As discussed previously, his monthly living expenses total \$1836. These expenses are not excessive. However, they include \$100 per month in discretionary spending for entertainment, which should be excluded in assessing Mr. L's hardship request. This results in necessary monthly living expenses of \$1736.

Mr. L's \$1736 living expenses, plus a \$409 monthly child support obligation, result in total monthly spending of \$2145, or \$103 more than he takes home every month. His actual shortfall is likely to be significantly higher than this, however, since this calculation does not make any allowance for Mr. L's obligation to his youngest child, for payments on his past-due child support, or for any unanticipated but necessary living expenses. If \$103 is deducted from Mr. L's \$409

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<sup>23</sup> For this reason, Mr. L's child support obligation for his youngest child can take into account his ongoing obligation to T. *See* Civil Rule 90.3(a)(1)(C).

<sup>24</sup> Civil Rule 90.3(c)

<sup>25</sup> Exhibit 5 at 6.

<sup>26</sup>  $\$24,510.56 / 12 = \$2,042.54$ .

support obligation, this results in an adjusted obligation of \$306 per month due to his financial hardship. This amount allocates all of Mr. L's disposable income to supporting T, after taxes and his necessary personal expenses are deducted. This does not result in a decrease from Mr. L's prior \$298 support amount, as he had requested, but the increase is minor and should be manageable.

There is no information in the record about T's circumstances or Ms. Z's household, except for Ms. Z's income information. CSSD did not oppose a hardship finding, however, and Ms. Z's income suggests that she is financially secure. She appears to be capable of providing for T even if Mr. L's ongoing obligation does not increase to the amount calculated under Civil Rule 90.3(a).

Mr. L seems to be working hard to earn income and to keep up with his many financial obligations. He does not appear to be spending money unnecessarily. Based on the totality of the evidence, Mr. L's ongoing monthly support amount should be set at \$306 per month in light of his financial hardship. This amount requires him to allocate all of his income, after taxes and necessary personal expenses, to supporting his daughter. At the same time, it avoids imposing on him an unsustainable financial burden. If Mr. L's financial situation improves, any party may request a modification review to address his changed circumstances.

#### **IV. Conclusion**

Based on the information that was available to it at the time, CSSD correctly calculated Mr. L's support amount under Civil Rule 90.3(a). However, Mr. L requested a variance under Civil Rule 90.3(c), and that request was granted. Based on the additional evidence brought forward in the hearing process, Mr. L's support obligation should be adjusted to \$306.00 per month, effective March 1, 2016, pursuant to Civil Rule 90.3(c).

#### **V. Child Support Order**

- Mr. L is liable for child support for T in the amount of \$306.00 per month from March 1, 2016, and ongoing;
- All other provisions of CSSD's Modified Administrative Child and Medical Support Order dated April 1, 2016, remain in full force and effect.

DATED this 20<sup>th</sup> day of May, 2016.

*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 3<sup>rd</sup> day of June, 2016.

By: Signed  
Signature  
Kathryn A. Swiderski  
Name  
Administrative Law Judge  
Title

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