

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

In the Matter of)	
)	
N J. A)	OAH No. 16-0519-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001151665

DECISION AND ORDER

I. Introduction

N A appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division increasing his child support obligation from \$235 a month to \$730 a month for two children.

The division correctly calculated Mr. A's child support obligation under Civil Rule 90.3(a). The evidence does not show unusual circumstances that would justify a hardship exception under Civil Rule 90.3(c). The division's order is affirmed.

II. Facts

The division established Mr. A's child support obligation in 2011 at \$235 a month for his children Q and L.¹ This year the custodial parent, T M H, requested that the division modify Mr. A's child support obligation.² The division notified Mr. A of the request.³ Mr. A's employer provided current income information. Mr. A's wages are \$24.04 an hour and he works full time.⁴ His year-to-date total gross earnings through April 3, 2016 were \$8,707.⁵ According to Department of Labor records, Mr. A's gross wages for 2015 totaled \$39,468.⁶

The division calculated Mr. A's child support obligation based on annual wage income of \$40,627 plus a permanent fund dividend, for a total of \$42,699.60. It deducted federal income taxes, FICA, SBS, and retirement contributions, for an adjusted annual income of \$32,459. Based on this, the division calculated that \$8,764 (27 percent) was available for child support.⁷ The division issued a Modified Administrative Child Support and Medical Support Order

¹ Division Exhibit 1.
² Division Exhibit 2.
³ Division Exhibit 3.
⁴ Division Exhibit 6.
⁵ Division Exhibit 4.
⁶ Division Exhibit 8.
⁷ Division Exhibit 5 at 9.

requiring Mr. A to pay \$730 each month in support for the two children.⁸ Mr. A appealed, arguing that he was unable to afford the increased child support obligation.

A telephonic hearing was held on May 31, 2016. Mr. A represented himself. Joseph West, Child Support Specialist, represented the division. The custodial parent, T M H also participated. The record closed on May 31, 2016.

III. Discussion

To determine whether the division's order is correct, we must examine Mr. A's income, and determine first whether the division correctly calculated his obligation under the rules, and, second, whether any unusual circumstances would justify an exception to the usual rules for calculating child support. Because he filed the appeal, Mr. A has the burden of demonstrating that the division's decision is incorrect.⁹

A. Mr. A's annual earnings

Mr. A disputes whether the division based its calculation on the correct income figure. The division based its calculations on \$40,627 in annual wages.¹⁰ At the hearing, Mr. A pointed out that his hours have been cut back, and that he has only been working 70 hours a pay period since the first of the year. He noted that the paystubs he sent reflect this reduction in hours. Mr. West stated that the modified child support amount was based on the paystubs Mr. A provided. The employee payroll statement provided by Mr. A's employer, the City of No Name, shows year to date gross earnings as of April 3, 2016 at \$8,707.¹¹ Since April 3, 2016, falls so close to the end of the calendar quarter, we can multiply this figure by four to arrive at an approximate anticipated annual income figure of \$34,828. Estimating Mr. A's income based on his actual earnings so far this year produces a figure lower than that used by the division to calculate his child support obligation.

However, calculating Mr. A's estimated annual wages based on his hourly earnings multiplied by 70 hours produces a higher annual income figure. Taking Mr. A's hourly wage of \$24.04 and multiplying by 70 hours, we get gross biweekly wages of \$1,682.80. This, multiplied by 26 periods, equals \$43,753.

⁸ Division Exhibit 5 at 3.

⁹ 15 AAC 05.030(h).

¹⁰ Division Exhibit 5 at 9.

¹¹ Division Exhibit 4 at 2.

However, the four paystubs provided by Mr. A's employer show that he was actually working fewer than 70 hours a pay period. He worked an average of 64.5 hours a pay period, earning an average of \$1,562. Multiplied by 26 pay periods, this comes to \$40,619. This figure is very close to the \$40,627.60 figure that the division used for Mr. A's wages. The information Mr. A and his employer provided does not demonstrate that the annual wage figure used by the division to calculate Mr. A's child support obligation was incorrect.

Mr. A argues that his child support obligation should be based on his net income, not his gross income. Calculating Mr. A's child support obligation based on his net income, however, would be inconsistent with Civil Rule 90.3(a), which requires that the calculation be based on the obligor parent's "total income from all sources."

Mr. A also argues the amount calculated under Civil Rule 90.3(a) is more than he can afford to pay in addition to his own living expenses, particularly given the high cost of living in No Name, Alaska. However, Civil Rule 90.3(a) calculations are based on the obligor's income, not the obligor's expenses. Where a parent has unusually high expenses an exception to Civil Rule 90.3(a) might apply.

B. Unusual Circumstances

Mr. A has requested that an exception be made in his case to the usual requirement under Civil Rule 90.3(a) that a non-custodial parent in a primary custody situation pay 27% of that parent's adjusted income in child support for two children. Under Civil Rule 90.3(c), a court may vary the child support award "upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied." The rule requires consideration of the custodial parent's income as well as the obligor parent's income in making this determination.¹² Both parents provided information about their income and expenses at the hearing. The economic and living circumstances of the two parents differ. However, the evidence in this case does not show unusual circumstances that would make application of the formula in Rule 90.3(a) unjust.¹³

In addition to the children covered by the order, Mr. A has an eight year old daughter who lives with him. Civil Rule 90.3 allows a deduction for children from prior relationships

¹² Civil Rule 90.3(c).

¹³ See Civil Rule 90.3 Commentary VI.B: "a court shall vary support if it finds, first, that unusual circumstances make application of the usual formula unjust. Examples might include especially large family size, significant income of a child, health or other extraordinary expenses, or unusually low expenses."

in the custody of the obligor parent. However, the children covered by this order are twelve and fourteen years old.¹⁴ Because they are older than the daughter living with Mr. A, Mr. A is not entitled to a deduction for the daughter who lives in his home.¹⁵ So, the expense of supporting a subsequent child in the home is not factored into the Rule 90.3(a) calculation. However, the need to support a subsequent child is also generally not considered an unusual circumstance for purposes of Civil Rule 90.3(c).¹⁶ Mr. A has not shown that the support obligation for his older children will cause substantial hardship to the daughter living in his home. In this case, the subsequent child in the home does not justify applying a Rule 90.3(c) exception for unusual circumstances.

Mr. A also has some debts, but in general, debts of the obligor will not justify a reduction in support.¹⁷ Mr. A testified that he owes approximately \$2,000 in debt for medical expenses, and \$2,800 to the housing authority. He makes payments of approximately \$100 a month for each of these debts. He also has purchased tools for work that he is paying for through a deduction from his paycheck. These debts do not constitute unusual circumstances for purposes of Civil Rule 90.3(c) because they are not unusually high or burdensome for middle-income wage earner.

A review of Mr. A's income and expenses does not show other unusual circumstances that would indicate that manifest injustice would result if support were not varied. Mr. A's annual income is approximately \$42,700 a year. Mr. A lives with his sister and her boyfriend. There are six children living in the home. Mr. A testified that he splits the rent obligation with his sister, so he pays \$350 a month. He estimated his food costs at \$600 to \$800 for himself only. He pays approximately \$700 - \$800 a month for heat and electricity, which supports his argument that the cost of living is high in No Name.¹⁸ However, high grocery, fuel, and electricity prices are a reality throughout rural Alaska, and

¹⁴ See Division's Pre-Hearing Brief at 1.

¹⁵ See Division Exhibit 5 at 9. The division did not give Mr. A a credit for prior children in the home, so this aspect of the calculation was correct.

¹⁶ Commentary to Civil Rule 90.3 at VI.B.2 ("A parent with a support obligation may have other children living with him or her who were born or adopted after the support obligation arose. The existence of such 'subsequent' children, even if the obligor has a legal obligation to support these children, will not generally constitute good cause to vary the guidelines. However, the circumstances of a particular case involving subsequent children might constitute unusual circumstances justifying variation of support. The court should reduce child support if the failure to do so would cause substantial hardship to the 'subsequent' children.)"

¹⁷ Commentary to Civil Rule 90.3 at VI.B.4.

¹⁸ Division Exhibit 7; Testimony of A.

do not constitute unusual circumstances. Mr. A's income is not exceptionally high or low, and his expenses are not extraordinary.

Civil Rule 90.3(c) requires that the custodial parent's income be considered as well in determining whether there is good cause for varying the support award. Ms. M H lives with her husband. Together they earn approximately \$150,000 a year. Although their income is higher than Mr. A's, they also have higher expenses overall. Both parents have significant expenses and debt obligations, and consideration of Ms. M H's income does not reveal any unusual circumstances requiring an exception to the Civil Rule 90.3(a) calculation.

Mr. A has not provided clear and convincing evidence that manifest injustice will result if the modified child support obligation is not varied under Civil Rule 90.3(c). Although he has established that he has other expenses and obligations, he has not shown unusual circumstances sufficient to justify an exception to the rule.

IV. Conclusion

Mr. A's ongoing child support obligation should be modified based on the Division's calculations. Modified ongoing child support should be set at \$730 a month for two children, effective March 1, 2016. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

The division's Modified Administrative Child and Medical Support Order issued on April 8, 2016 is affirmed.

Dated: June 15, 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 1st day of July, 2016.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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