

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

In the Matter of	)	
	)	
K H	)	OAH No. 18-0253-CSS
_____	)	Agency No. 001160911

**DECISION AND ORDER**

**I. Introduction**

K H appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 20, 2018. The modification increased Mr. H’s child support obligation for his son, K, to \$591 per month, effective November 1, 2017.

The hearing took place by telephone on April 6, 2018. Child Support Specialist Brandi Estes represented CSSD. Mr. H did not answer calls to his telephone number of record or respond to two voice messages left at that number. He did not contact the Office of Administrative Hearings within ten days after the hearing to explain his failure to participate or to request a new hearing. Custodial parent M N also did not answer a call to her number of record or timely respond to a message left at that number. The hearing therefore took place without either parent’s participation.

Mr. H did not show that the modified child support order should be adjusted. The evidence in the record shows that CSSD properly calculated his modified support obligation under Civil Rule 90.3(a) based on his actual income. Mr. H’s written appeal requested a reduction of his obligation to \$300 per month because of financial hardship. However, he did not meet his burden of showing that unusual circumstances or substantial hardship to his younger children justify a variance under Civil Rule 90.3(c). Accordingly, the February 20, 2018 Modified Administrative Child Support and Medical Support Order is affirmed.

**II. Facts**

Mr. H and Ms. N are the parents of K, age 12.<sup>1</sup> In 2010, CSSD established Mr. H’s support obligation for K, setting the ongoing amount at \$272 per month.<sup>2</sup>

Pursuant to Ms. N’s request for a modification review, on October 30, 2017, CSSD served on each parent a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup>

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<sup>1</sup> Exhibits 1, 4.  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibits 2, 3.

The notice directed both parents to submit income information. Neither parent responded.

On February 20, 2018, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. The order increased Mr. H's support amount to \$591 per month, effective November 1, 2017. CSSD calculated this obligation based on Mr. H's 2017 employer-reported wage income, \$41,860, plus the Alaska PFD and the dividend income Mr. H receives as a Native Corporation shareholder.<sup>4</sup>

Mr. H appealed. His written appeal states:<sup>5</sup>

Financial shrink of income in my household. I am responsible for providing for my two sons well-being as well. I would like my monthly payment adjusted from \$591.00 a month to a comfortable amount, set to \$300.00 a month. Unable to keep my household bills met paying \$591.00 a month.

The Office of Administrative Hearings (OAH) notified Mr. H of the formal hearing in this matter by certified mail sent to his address of record on file with CSSD.<sup>6</sup> At the time set for the hearing, the undersigned called Mr. H's telephone number of record. The outgoing message identified the number as Mr. H's. Mr. H did not respond to the two voice messages left for him, and he did not contact OAH within ten days after the hearing to explain his unavailability. The undersigned concluded that Mr. H received proper notice of the hearing, which took place without his participation.<sup>7</sup> The hearing was audio-recorded. All submitted documents were admitted to the record, which closed on April 16, 2018.

### **III. Discussion**

#### *A. Failure to Appear*

Mr. H filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which states:

If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.

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<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> The green return-receipt card was not returned to OAH.

<sup>7</sup> See 15 AAC 05.030(g). Ms. N contacted OAH shortly after the hearing concluded. However, as the non-appelling party, she has no authority to request a rescheduled hearing. To the extent she believes this decision is incorrect, she may file a proposal for action explaining her position.

Mr. H has not shown reasonable cause for his failure to appear, as required by the regulation. As of this date, he has not contacted the OAH to inquire about his hearing or his case.<sup>8</sup> This decision therefore is issued without any further participation from him.

*B. Child Support Modification under Civil Rule 90.3(a)*

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order is incorrect.<sup>9</sup> Mr. H filed this appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated February 20, 2018 is incorrect.

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> Civil Rule 90.3 provides the formula for calculating child support awards. Once a child support order has been issued, modifications are available upon a showing of "good cause and material change in circumstances."<sup>11</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified. Mr. H's child support amount has been \$272 per month since 2010. Thus, a change of \$40.80 or more is sufficient to warrant a modification.<sup>12</sup>

The evidence in the record does not suggest that CSSD made any errors in calculating Mr. H's obligation under the primary custody formula at Civil Rule 90.3(a). Alaska Department of Labor information indicates that Mr. H's gross wage income has been quite stable over the past three years. In 2017, he worked during the second, third and fourth quarters, earning \$41,860 in gross wages.<sup>13</sup> In 2016, he worked for the same employer during all four quarters, earning gross wages of \$45,525.<sup>14</sup> In 2015, he worked during the fourth quarter for the same employer, and during the second and third quarters for two other employers, earning annual gross wages of \$41,785.45.<sup>15</sup> Mr. H is a shareholder of the No Name Native Corporation, and he receives dividend income each year from his 100 shares. He also receives the Alaska PFD.

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<sup>8</sup> OAH also sent Mr. H a Notice of Assignment by first-class mail on March 22, 2018, informing him of the administrative law judge assigned to his appeal. That notice has not been returned to OAH and it is presumed delivered.

<sup>9</sup> 15 AAC 05.030(h).

<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup>  $\$272 \times 15\% = \$40.80$ .

<sup>13</sup> Exhibit 6.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

K is Mr. H's oldest child. Absent a finding of financial hardship or unusual circumstances, the Civil Rule 90.3(a) primary custody formula entitles him to 20% of Mr. H's adjusted annual income, without any reduction for Mr. H's younger children from different relationships.<sup>16</sup> This is because parents have a paramount duty to support their children, and new obligations to subsequent children do not diminish that duty.<sup>17</sup> After applicable deductions for matters such as federal income taxes and Social Security/Medicare withholding, the Civil Rule 90.3(a) formula results in a \$591 monthly obligation for K.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>18</sup> In this case, CSSD provided notice to each parent in October 2017. Therefore, the modification is effective beginning November 1, 2017.

*C. Hardship Variance under Civil Rule 90.3(c)*

Child support determinations calculated under Civil Rule 90.3(a) 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>19</sup> This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Mr. H's written appeal asserts that he cannot adequately provide for his younger children and pay his household expenses if his support for K is not reduced. This unsupported statement falls short of meeting the clear and convincing evidence standard required for hardship reductions.

**IV. Conclusion**

Mr. H filed an appeal, but he did not appear at the hearing or provide evidence showing that CSSD made a mistake when it issued the Modified Administrative Child and Medical Support Order dated February 20, 2018. The modification was calculated under Civil Rule 90.3(a) based on the actual income Mr. H received in 2017. Mr. H requested a reduction based

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<sup>16</sup> Civil Rule 90.3(a)(2); Civil Rule 90.3, Commentary VI.B.2.

<sup>17</sup> *Kestner v. Clark*, 182 P.3d 1117, 1123 (Alaska 2008) (a parent should not be relieved of the obligation to support his or her children except under the most extreme circumstances).

<sup>18</sup> 15 AAC 125.321(d).

<sup>19</sup> Civil Rule 90.3(c); *see also* 15 AAC 12.075.

on financial hardship, but he did not submit evidence satisfying his burden of proof on this issue. His request for a hardship variance under Civil Rule 90.3(c) is therefore denied.

**V. Child Support Order**

- The Modified Administrative Child and Medical Support Order dated February 20, 2018, is affirmed and remains in full force and effect.

DATED: April 17, 2018.

By: Signed  
Kathryn 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 1<sup>st</sup> day of May, 2018.

By: Signed  
Signature  
Kathryn Swiderski  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]