

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

IN THE MATTER OF:)

J. Y. A.)

) OAH No. 04-0200-CSS
) CSSD NO. 001046034
) DOR NO. 040803
)

DECISION AND ORDER

I. Introduction

This matter involves the Obligor J. Y. A.' appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 26, 2004. The Obligee children are C., DOB 00/00/89, and J., DOB 00/00/91.

The formal hearing was held on January 20, 2005. Mr. A. appeared in person; the Custodian of record, M. V. A., participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on January 20, 2005.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. A.' appeal should be granted and his child support should be varied from the modified amount because of unusual circumstances.

II. Facts

A. History

Mr. A.' previous support order was set at \$255 per month for the Obligees C. and J. in 1997.¹ Ms. A. requested a modification on July 22, 2004.² On July 27, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On October 26, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order. The order set modified ongoing child support at \$802 per month, effective August 1, 2004.⁴ Mr. A. filed an appeal on November 12, 2004.⁵

¹ Exh. 4 at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 4.

⁵ Exh. 6.

At the formal hearing, Mr. A. stated the child support amount calculated by CSSD at \$802 per month is too high because Ms. A. gave up the children C. and J., and because he has other children in his home to support. Mr. A. testified C. and J. went to live in the Philippines at least two years ago. He said he has attempted to contact them in the past, but their telephone number was not in service.

Mr. A. also testified that he is married to a woman named D. and they have two children in the home. One child is 5 ½ years old, and the other is 2 ½ years old. Mr. A. said his wife D. works at the airport providing cabin services for aircraft. Mr. A. further testified he and D. typically work on the same shift, so her mother provides the bulk of the child care they need for the children in her home. Mr. A. said he wants the child support amount to be fair, but with two younger children in the home, \$802 per month is too high.

Ms. A. also provided testimony at the hearing. She admitted she sent C. and J. to the Philippines on October 28, 2002, to live with her mother and attend school. Ms. A. said it costs \$600 per month to support C. and J. in the Philippines, especially because of the high cost of sending them to school. Ms. A. said she is planning to bring the children back to Alaska at the end of the 2004-2005 school year.

Ms. A. also testified she lives with a partner and their two children in Kodiak. Their other two children are 3 ½ and 2 ½ years of age. Her partner is employed, but Ms. A. said she is not working now because she is pregnant with their third child. She added that she has to borrow money from her partner to support C. and J.

At the close of testimony, CSSD stated it would not oppose Mr. A.' child support being lowered from \$802 per month, pursuant to the "unusual circumstances" provision of Civil Rule 90.3(c). CSSD said a variance would be appropriate because it appears from the testimony that Ms. A. expects Mr. A. to provide all of C.'s and J.'s support, but she should also bear some of the cost of their support when they are in the custody of a third party.

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. CSSD correctly calculated Mr. A.' modified child support at \$802 per month, based on his total income, effective August 1, 2004;
2. Mr. A. met his burden pursuant to Civil Rule 90.3(c) of proving by clear and convincing evidence that manifest injustice will result if his modified child support amount is not varied from \$802 per month;

3. The Obligee children C. and J. currently live in the Philippines, where they have resided with their maternal grandmother since October 28, 2002;

4. Although Ms. A. testified she plans to bring C. and J. back to the United States at the end of the 2004-2005 school year, the date of their return is not certain;

5. The cost of supporting C. and J. in the Philippines is \$600 per month;

6. This case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Manifest injustice would result if Mr. A. were required to provide all of C.'s and J.'s support while they live with a third party in the Philippines;

7. Setting Mr. A.' child support at \$550 per month constitutes a reasonable measure of the Obligor's ability to pay support under Civil Rule 90.3(c), and his support should be modified to that amount effective August 1, 2004.

III. Analysis

A parent is obligated both by statute and at common law to support his or her children.⁶ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Mr. A. provided his income figures from 2004, which CSSD used in the calculation.⁷ These were the proper figures to use, and CSSD's modified support calculation of \$802 per month for two children is correct under Civil Rule 90.3.

Child support determinations calculated under Civil Rule 90.3 from a 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.⁸ In order to establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."⁹ A finding that "unusual circumstances" exist in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . .

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⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ Exhs. 3 & 5.

⁸ Civil Rule 90.3(c).

⁹ Civil Rule 90.3(c).

¹⁰ Civil Rule 90.3(c)(1)(A).

This language indicates the child support amount may be reduced if it would be manifestly unjust not to do so under the circumstances of a particular case. It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).

I considered the totality of the circumstances in Mr. A.' case, and based on the evidence presented, I found that this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. A. proved by clear and convincing evidence that manifest injustice will result if his modified child support amount is not lowered. The unusual circumstances presented here are that for two years, C. and J. have been living with their grandmother in the Philippines, where the cost of living is lower than it is in the United States. If Mr. A.' modified child support is set at \$802 per month as of August 2004, and the children return to Kodiak at the end of this school year, Mr. A. will have been paying 30% more than the total cost of supporting them for almost a full year. If they do not return to Kodiak as planned, Mr. A. would have to pay those additional funds for an even longer period.

Ms. A.'s income information is not available, but she testified currently she is not working because of her pregnancy. This appeal does not involve setting Ms. A.'s child support obligation, but if it did, in spite of her lack of income, she still would be obligated to pay at least \$50 per month for C.'s and J.'s support.¹¹ Ms. A. said it takes \$600 per month to support the children overseas, so that is the minimum amount they should receive. Allocating \$50 per month of that cost to Ms. A. leaves a balance of \$550, which should be borne by Mr. A. Setting his child support at \$550 per month is reasonable, since it more than doubles the amount of his previous support order, plus it assigns at least some of the cost of supporting C. and J. in the Philippines to Ms. A.

Mr. A.' child support should be modified to \$550 per month, effective August 1, 2004. If and when C. and J. return to Kodiak, either parent may request additional modification.

IV. Conclusion

Mr. A. met his burden of proving that manifest injustice would result if his child support was not varied pursuant to Civil Rule 90.3(c). A monthly child support amount of \$550 per month is a reasonable measure of Mr. A.' support obligation for C. and J. while they live in the Philippines with Ms. A.'s mother. Accordingly, I issue the following child support order:

¹¹ Civil Rule 90.3(c)(1)(B).

III. Child Support Order

- Mr. A. is liable for modified ongoing child support in the amount of \$550 per month, effective August 1, 2004.

DATED this 8th day of April, 2005.

By: Signed _____

Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of J. Y. A. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 8th day of April, 2005.

By: Signed _____

Terry L. Thurbon
Chief Administrative Law Judge

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