

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

IN THE MATTER OF:)

E. K. B.)

) OAH No. 04-0213-CSS
) CSSD NO. 001067525
) DOR NO. 040819
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor E. K. B.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 27, 2004. The Obligee child is A., DOB 00/00/95.

The formal hearing was held on January 27, 2005. Mr. B. appeared in person; the Custodian, T. N. S., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 27, 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. B.'s appeal should be granted; he should be granted a financial hardship variance pursuant to Civil Rule 90.3(c).

II. Facts

A. History

Mr. B.'s child support was set at \$172 per month in February 1999.¹ Ms. S. initiated modification on December 29, 2003.² On January 12, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On October 27, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B.'s modified ongoing child support at \$512 per month, effective February 2004.⁴ The calculation is based on

¹ Pre-Hearing Brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

the wages Mr. B. received during the four consecutive quarters from the third quarter of 2003 through the second quarter of 2004.⁵ Mr. B. filed an appeal on November 22, 2004.⁶

At the formal hearing, CSSD and Mr. B. stated they had been discussing his appeal prior to the hearing, and had resolved all but one issue in the case, that being whether Mr. B.'s child support should be lowered based on a financial hardship pursuant to Civil Rule 90.3(c). CSSD stated Mr. B. provided his year end pay stub which showed his 2004 income was \$35,215.73.⁷ CSSD said it had used that income figure to revise Mr. B.'s modified ongoing child support obligation to \$489 per month, effective February 2004.⁸

CSSD indicated the agency had reviewed Mr. B.'s expenses, and determined he has minimum monthly expenses of \$2200 per month, which includes a child support payment of \$396 per month for a prior child. CSSD said other than the usual bills for rent, food, a car payment, insurance, and personal-care items, Mr. B. owes \$2400 to the IRS for a prior year tax obligation, for which he pays \$50 per month. He also has a credit card obligation \$4000, which he is contesting at this time. Of his regular bills, Mr. B.'s largest expense is \$460 per month for the payment on a 2002 Chevrolet Trail Blazer.⁹ CSSD said a vehicle this large and expensive may be appropriate, given the size of Mr. B.'s family.

Mr. B. testified he has a financial hardship due to having two children in the home, one of whom was just born in October 2004. The other child will turn eight years old in July 2005. Mr. B. stated his wife is not currently working so she can take care of their newborn child.

Mr. B. further testified his rent obligation is only \$400 per month because he and his family live with his mother in her home, so that is why they get such a good deal on rent and utilities. When asked what he perceived his options to be regarding all of his financial obligations, Mr. B. stated it appears he has two options, reducing expenses and/or getting another job.

CSSD indicated Ms. S., the custodial parent in this matter, earned income of approximately \$26,000 in 2003 and in 2004 her employer reported she earns \$3800 per month, which would equal approximately about \$45,600 annually. In its closing statement, CSSD

⁵ Exh. 3 at pg. 6.

⁶ Exh. 4.

⁷ Exh. 6.

⁸ Exh. 7.

⁹ See Exh. 8.

indicated it would not oppose a short-term variance of approximately \$75 per month until Mr. B.'s wife returns to work.

B. Findings

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

1. As required by 15 AAC 05.030(h), Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect;

2. Mr. B.'s 2004 income was \$35,215.73, which yields a child support amount of \$489 per month;

3. This case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. B. proved by clear and convincing evidence that manifest injustice will result if the child support amount calculated from his actual income is adopted;

4. Setting Mr. B.'s child support at \$400 per month constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c), and his support should be set in that amount.

III. Discussion

The issue raised in this appeal is whether Mr. B. is entitled to a variance in his child support obligation as a result of having a financial hardship. Child support determinations calculated under Civil Rule 90.3 from an obligor'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. In order 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." Civil Rule 90.3(c). 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^[10]

¹⁰ Civil Rule 90.3(c)(1).

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).¹¹ I considered the totality of circumstances, and based on the evidence in the record, I found that this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. B. proved by clear and convincing evidence that manifest injustice will result if his modified child support is not varied from the amount calculated pursuant to Civil Rule 90.3. Mr. B. has two children in the home, one of them an infant, and his wife currently is not working so she can stay home and care for the child. The result is that Mr. B.'s sole income must support his household without the financial assistance of his wife.

Civil Rule 90.3(c)(1) requires that a "good cause" determination also must consider the custodial parent's income. Ms. S. did not participate in the hearing, but CSSD said her employer reported Ms. S. received wages of approximately \$3800 per month in 2004. This is an adequate amount of income with which to support A. along with Mr. B.'s child support payment of \$400 per month. The "good cause" reduction is only \$89 per month, so it should not negatively impact Ms. S.'s ability to support A.

CSSD stated it would agree to a temporary variance in Mr. B.'s child support, and the agency's recommendation will be adopted. CSSD identified the as-yet unknown date that Mr. B.'s wife returns to work as an appropriate time for Mr. B.'s child support to return to the calculated amount of \$489 per month, but it is not known when Ms. B. plans to return to work. Given that there was no testimony on this issue, I have determined that Mr. B.'s child support variance should expire on April 30, 2006, when his newborn is eighteen months old. This should give Mr. B. and his wife sufficient time to decide how they will cover Mr. B.'s increase in child support when the variance expires.

IV. Conclusion

Mr. B. 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 child support amount of \$400 per month is a reasonable measure of Mr. B.'s modified support amount for A. Subject to any subsequent modifications that may be filed before then, his support amount will return to \$489 per month as of May 1, 2006.

¹¹ See Civil Rule 90.3, Commentary VI.E.1.

V. Child Support Order

- Mr. B. is liable for modified child support in the amount of \$400 per month, effective for the period from February 1, 2004 through April 30, 2006;
- Mr. B. is liable for child support in the amount of \$489 per month, effective May 1, 2006, and ongoing.

DATED this 15th day of June, 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 E. K. B. be adopted as of this date and entered in the 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 15th day of June, 2005.

By: Signed _____

Terry L. Thurbon
Chief Administrative Law Judge

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