

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

IN THE MATTER OF:)

K. J. S.)

) OAH No. 06-0053-CSS

) CSSD No. 001136895

DECISION AND ORDER

I. Introduction

This matter involves the Obligor K. J. S.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 12, 2005. The Obligee child is G., DOB 00/00/04.

The formal hearing was held on February 8, 2006. Mr. S. appeared in person; the Custodian, R. R. W., participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 1, 2006.

Kay L. Howard, Administrative Law Judge in the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Mr. S.'s appeal should be granted in part and denied in part. The child support calculations for 2005 and 2006 should be adjusted somewhat to account for his new job, but he is not entitled to a reduction in child support based on financial hardship.

II. Facts

A. History

On October 6, 2005, CSSD served an Administrative Child and Medical Support Order on Mr. S.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 12, 2005, that set Mr. S.'s ongoing child support at \$610 per month, with arrears of \$3370 for the period from July 2005 through December 2005.³ Mr. S. filed an appeal and requested a formal hearing on January 6, 2006.⁴

¹ Exh. 3.

² Exh. 4.

³ Exh. 7.

⁴ Exh. 9.

B. Material Facts

Mr. S. and Ms. W. are the parents of G., DOB 00/00/04. Both parents live in the Anchorage area and G. lives with Ms. W.

In 2005, Mr. S. worked at Udelhoven Oilfield Services, where he earned a salary. He was laid off in September 2005, followed by a short period of time in which he received unemployment benefits. On October 17, 2005, Mr. S. began a temporary job at CED Electric, where he earned \$16.73 per hour. He did not always get 40 hours of work per week, but in February 2006, Mr. S. was made a permanent employee at CED Electric, earning the same hourly wage. He said he plans on staying there, and will soon become eligible for retirement deductions.

Mr. S. worked for four employers in 2005: Redeemer Cleaner Service, where he earned \$324; Udelhoven Oilfield Services, \$26,373.60; CED Electric, \$6,633.84; and Alaska Industrial Hardware, \$11,547.76, all of which totals \$44,879.20.⁵

Mr. S. lives with his fiancée, J., who currently works at Polar Supply. However, her employment situation may change this summer, as she is pregnant with the couples' child and is due at the end of July 2006.

Mr. S. has regular household and living expenses of approximately \$3200 per month, which includes \$800 for the mortgage; \$240 for condo fees; \$100 for electricity; \$35 for telephone; \$70 for cable; \$550 for the payment on 2003 GMC Sierra; \$200 for gasoline; \$20 for vehicle maintenance; \$140 for vehicle insurance; \$20 for life insurance; \$150 for entertainment and eating out; \$400 for groceries; \$10 for alcohol or tobacco; \$3 for dental insurance; \$150 for two credit card payments; \$65 for student loans; \$50 for personal care items; \$75 for clothing; and \$144 for cell phone. Mr. S. did not apportion these expenses between himself and his fiancée, but it is assumed they share expenses.

Finally, the parties stipulated that Mr. S. is entitled to a credit for child support he paid directly to the custodian in the amount of \$170 in July 2005 and \$120 in August 2005, for a total of \$290.

⁵ See Exh. 12.

III. Discussion

Mr. S.'s appeal raises two issues: whether CSSD used the correct income figures in his child support calculation; and whether he is entitled to a reduction in his child support based on a financial hardship.

A. Mr. S.'s Income

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 is to be calculated from his or her "total income from all sources."

CSSD calculated Mr. S.'s 2005 child support at \$610 per month, based on an income figure of \$45,667.96.⁷ CSSD used three quarters of Alaska Department of Labor data and one quarter of his CED Electric wages to determine his annual income for 2005. After the hearing, Mr. S. provided his W-2s, which indicate in 2005 his total income was \$44,879.20.⁸ CSSD used this figure in a draft child support calculation for 2005, which resulted in a child support figure of \$604 per month.⁹ I find this calculation is correct, pursuant to Civil Rule 90.3, and conclude it should be adopted for 2005.

CSSD revised the child support calculation for 2006 prior to the hearing. The agency multiplied Mr. S.'s wage of \$16.73 per hour times 2080, the usual number of hours a full-time employee works in a one-year period. This calculation results in a child support amount of \$485 per month.¹⁰ I find this calculation is also correct, pursuant to Civil Rule 90.3, and conclude it should be adopted for 2006 and ongoing.

B. Reduction in Child Support Based on Hardship

The second issue in this appeal is whether Mr. S. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule Civil Rule 90.3(c).

CSSD correctly calculated Mr. S.'s child support at \$604 per month for 2005, and \$485 per month for 2006 and ongoing, based on his actual income figures. It is from these calculations that Mr. S.'s request for a variance based on financial hardship should be considered.

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

⁷ Exh. 8. The

⁸ Exh. 13.

⁹ *Id.*

¹⁰ Exh. 11.

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). If the parent can prove that "unusual circumstances" exist in his or her case, this may also 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^[11]

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).¹²

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. S. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for G.

Mr. S.'s bills are no higher than the expenses incurred by many Alaskans. Mr. S. believes he is incapable of meeting the child support obligation because his income is not sufficient to meet all of his financial obligations. Being required to pay child support for G. may result in difficult budgeting decisions for Mr. S., especially when his subsequent child is born, but simply having monthly living expenses or debts that exceed a parent's net income does not automatically entitle him or her to a reduction in the child support calculation. G. is entitled to receive child support in an amount commensurate with Mr. S.'s ability to pay support, as measured by his income and calculated pursuant to Civil Rule 90.3.

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. S.'s child support amount as calculated by CSSD.

¹¹ Civil Rule 90.3(c)(1).

¹² See Civil Rule 90.3, Commentary VI.E.1.

IV. Conclusion

Mr. S. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. His child support is now correctly calculated at \$604 per month for 2005, and \$485 per month for 2006 and ongoing.

V. Child Support Order

- Mr. S. is liable for child support in the amount of \$604 per month for July 2005 through December 2005; and \$485 per month for January 2006 through March 2006, and ongoing;
- Mr. S. is entitled to a credit for child support he paid directly to the Custodian in the amount of \$170 in July 2005 and \$120 in August 2005, for a total of \$290.

DATED this 21st day of March, 2006.

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. 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 7th day of April, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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