

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

IN THE MATTER OF:)

D. L.)

) OAH No. 06-0403-CSS
) CSSD No. 001028638
)

DECISION AND ORDER

I. Introduction

The Obligor, D. L., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on May 10, 2006. The Obligee children are A., F., L. and A.

The hearing was held on July 20, 2006. Both Mr. L. and the Custodian of record, R. J. L., appeared in person. Mr. L. was accompanied by attorney Rex Butler, but he stated he does not represent Mr. L., and primarily just listened during the hearing. Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on September 8, 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. L. has prevailed in this appeal and his child support should be set at \$967 per month.

II. Facts

A. History

Mr. L.'s child support obligation was set at \$50 per month in 1994. Ms. L. initiated modification of the order on December 22, 2005.¹ On February 8, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. L. did not provide income information. On May 10, 2006, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. L.'s modified ongoing child support at \$1084 per month, effective March 1, 2006.³ Mr. L. appealed on May 24, 2006, asserting Ms. L. does not need any

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

more support because they have a long standing agreement for him to pay the house payment and utilities, and to provide the groceries and clothing for the family.⁴

B. Material Facts

Mr. L. and Ms. L. are the parents of A., F., L. and A., who range in age from 16 to 13 years of age. The children reside with Ms. L.

The parties have been separated for several years; Ms. L. asked her husband for a divorce three to four years ago, but neither one of them has filed an action in court. In the past, Mr. L. has been paying the house mortgage and utilities, and providing Ms. L. some cash for purchasing groceries, clothes and other necessities.

Ms. L. is not employed; she has no independent source of funds other than the money Mr. L. gives her and the children. Ms. L. claims her husband uses money, and the threat of not giving her any, as a means of control over her. She stated he has let her home go into foreclosure twice – once when she asked for the divorce, and once when she finally filed for child support services because he wasn't giving her enough money. Prior to the hearing, Ms. L. filed numerous documents, among them a copy of a 7-day notice of eviction, which apparently was taped to her door on June 23, 2006, along with a notice of default under deed of trust, stating that the property was to be sold on September 19, 2006.⁵ It is not known whether that sale has taken place.

Mr. L. testified that he works as a laborer for his brother, A. L. He testified he earned \$39,000 in 2005, and provided a Form 1099 from XXX Investments LLC, his brother's company.⁶ He testified he pays the rent and utilities for Ms. L. and the children, and he provided one rent receipt for \$1170, copies of money orders totaling \$3285 that he said he gave to Ms. L., a grocery receipt for \$141.76, and three utilities receipts and one insurance receipt, all of which total \$1312.88.⁷

After the hearing, Ms. L. filed over one hundred pages of documents, numbered sequentially by CSSD as Exhibits AA through FFF. She asserted they establish Mr. L. has at this

⁴ Exh. 4.

⁵ Custodian's unmarked exhibit, hereinafter referred to as Exh. A, at pgs. 7-8.

⁶ Obligor's Exh. 10.

⁷ Obligor's Exhs. 1, 2, 5, 6, 7, 8, 9.

time, or has had in the past, significant assets and/or business interests that he has been hiding from her for many years as a form of economic control.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has been met.

Mr. L.'s child support was set at \$50 per month in July 1994. Pursuant to the petition for modification, CSSD calculated Mr. L.'s child support at \$1084 per month, based on the average annual income for men in his age bracket of \$44,752.¹⁰ A child support calculation using the \$39,000 income figure in Mr. L.'s 2005 Form 1099 from his brother's company yields a child support calculation of \$967 per month.¹¹ Other than his 2004 tax return showing income of \$12,428,¹² the 1099 form is the only evidence of Mr. L.'s actual income in the record. Therefore, I find that the figure of \$967 per month is a correct determination of Mr. L.'s child support obligation.

The administrative law judge has little confidence in the above figure because Ms. L. filed a number of documents showing that Mr. L. has been involved in numerous real estate transactions in the past few years that suggest he has more financial resources available to him than he admits. Also, Mr. L. testified he never owned a business in Anchorage other than Pizza XXXX, which he claims he held for only six months in order to do a friend a favor. Yet the Division of Occupational Licensing issued a business license to Mr. L. for the No Name Business store in Anchorage as recently as 1999 or 2000.¹³ Also, Mr. L. is listed as the grantor

⁸ *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ AS 25.27.190(e).

¹⁰ Exh. 3 at pg. 6.

¹¹ See Attachment A.

¹² Obligor's Exh. 11.

¹³ Exh. JJ.

along with No Name Restaurant on a 1993 judgment lien in favor of No Name Distribution Center.¹⁴ These two documents indicate Mr. L. had an ownership interest in those businesses.

Ms. L. also alleged Mr. L. is connected to No Name Videos, Inc.¹⁵ Mr. L. acknowledged he is a 40% owner of the business, but argues he does not realize any income from it. In addition to the business license and the judgment lien, Mr. L. is listed as having executed several warranty deeds and deeds of trust since 2002, the most recent being in June 2005.¹⁶ Ms. L. uses these documents as the basis to claim Mr. L. has business relationships with L. Ltd., No Name Investments LLC, No Name Mortgage, and No Name Development.¹⁷ Even if all of Ms. L.'s assertions are true, the documents she provided are insufficient to establish Mr. L.'s income. Rather, they all speak to Mr. L.'s possible assets, not his income, and they are thus ineffective to determine the latter.

This case is one in which a thorough investigation of the Obligor's financial circumstances would be advisable. Ms. L.'s written statement requested assistance in order to resolve her issues with Mr. L. so that a divorce would not be necessary. It is not possible for the administrative law judge to participate in her case in that way. This is a child support action only, not one in which all of the parties' financial dealings can be addressed. Only the Superior Court has the authority to sort out all of the issues related to the L.s' marital estate.

That having been said, two other issues must be addressed here. First, Mr. L. requested credit for payments made to Ms. L. after this modification action was initiated. Those payments are reflected in his receipts filed as Exhibits 1 through 11, on July 24, 2006.¹⁸ Having reviewed all of the Obligor's receipts, and taking into consideration the record as a whole, I find Mr. L. is entitled to credit for the rent payment of \$1170 he made on July 15, 2006 (Exh. 1); the money orders totaling \$3285 he has given to Ms. L. (Exh. 2); the groceries totaling \$141.76 (Exh. 5); the utilities bills totaling \$1051.67 (Exhs. 6, 7, 8); and the automobile insurance of \$260.21 (Exh. 9).

Finally, Mr. L. requested a variance in the child support calculation based on 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

¹⁴ Exh. LL.

¹⁵ Exh. KK.

¹⁶ Exh. NN.

¹⁷ See Aug. 22, 2006, Notice of Filing.

¹⁸ CSSD will have already credited Mr. L. with the payments he made directly to the agency, as seen in Exhs. 3-4.

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^[19]

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), including the Custodian’s circumstances.²⁰

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. L. 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. Mr. L.’s situation does not constitute “unusual circumstances” pursuant to Civil Rule 90.3, and he has not proven there is good cause to reduce his support obligation. He stated he and Ms. L. have had a long-standing arrangement for him to pay the mortgage, utilities, food and basic household necessities. It is inconsistent for him to claim at this point that he cannot afford an amount that is significantly less than what he supposedly has been paying voluntarily for several years.

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. L.’s child support amount of \$967 per month, as calculated according to his 1099 income statement. I conclude that amount should be adopted.

IV. Conclusion

Mr. L. met his burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect. The child support figure of \$967 should be adopted.

¹⁹ Civil Rule 90.3(c)(1).

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

V. Child Support Order

- Mr. L. is liable for modified ongoing child support in the amount of \$967 per month, effective March 1, 2006;
- Mr. L. is entitled to credit for the rent payment of \$1170 he made on July 15, 2006 (Exh. 1); the money orders totaling \$3285 he has given to Ms. L. (Exh. 2); the groceries totaling \$141.76 (Exh. 5); the utilities bills totaling \$1051.67 (Exhs. 6, 7, 8); and the automobile insurance of \$260.21 (Exh. 9).

DATED this 28th day of September, 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 3rd day of November, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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