

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

IN THE MATTER OF:)

T. K. T., JR.)

) OAH No. 06-0499-CSS

) CSSD No. 001062181

DECISION AND ORDER

I. Introduction

The Obligor, T. K. T., Jr., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 20, 2006. The Obligee child is K., DOB 00/00/95.

The hearing was held on August 1, 2006. Mr. T. appeared in person; the Custodian of record, L. L. N., participated by telephone. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on August 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 CSSD correctly calculated Mr. T.' modified child support amount.

II. Facts

A. History

Mr. T.' child support obligation for K. was set at \$238 per month in 1996. Ms. N. initiated modification of the order on April 3, 2006.¹ On April 11, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² On June 20, 2006, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T.' modified ongoing child support at \$355 per month, effective May 1, 2006.³ Mr. T. appealed on July 6, 2006, asserting the amount is too high and he has another child support case.⁴

¹ Exh. 1.

² Exh. 2.

³ Exh. 4.

⁴ Exh. 5.

B. Material Facts

Mr. T. and Ms. N. are the parents of K., DOB 00/00/95. Ms. N. lives out of state and has primary custody of the child. Mr. T. pays support for a younger child named H., DOB 00/00/01.

Mr. T. has been employed as the assistant manager of a local gas station since December 2005. He earns \$11.50 per hour. He previously worked for a food service company. Mr. T.' duties include supervising his work shift, covering for the store manager, ordering inventory, cleaning the store, taking care of customer relations, and other miscellaneous tasks. He works three afternoon shifts per week and two morning shifts, for a total of 40 hours per week. He earns overtime as necessary to cover for sick and vacationing employees.

Ms. N. is not currently working. She is married and has two children in the home, K. and a toddler named E. Her husband has been providing K.'s medical insurance since January 2000.

III. Discussion

Mr. T.' appeal raises two issues: the correct level of income for the child support calculation; and whether he is entitled to a reduction in his child support based on a financial hardship.

A. Income

A parent is obligated both by statute and at common law to support his or her children.⁵ 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."⁶ If the newly calculated child support amount is less than a 15% change from the previous order, Civil Rule 90.3(h) does not require that the child support amount be modified.

Mr. T.' child support was set at \$238 per month in 1996. CSSD calculated Mr. T.' modified child support at \$355 per month, based on his May 4, 2006, year-to-date income, which CSSD estimated at \$24,696.36 annually.⁷ Mr. T. testified his income includes overtime, which is not guaranteed. Mr. T. earns \$11.50 per hour, which at straight time for one year would equal wages of \$23,920 (\$11.50 per hour x 2080 hours). This figure is just \$776 less than the annual

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁶ AS 25.27.190(e).

⁷ Exh. 4 at pg. 6.

income figure CSSD estimated. Given that Mr. T. occasionally earns overtime, CSSD's calculation is reasonable.

B. Financial Hardship

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

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." CSSD correctly calculated Mr. T.' child support at \$355 per month, based on his income. It is from this calculation that Mr. T.' request for a variance based on financial hardship should be considered.

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^[9]

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).¹⁰

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. T. 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. T.' financial situation appears to be somewhat strained because he pays support for a younger child. The other support obligation is apparently in the administrative review process. Now that this decision has been issued, Mr. T. should be able to

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

⁹ Civil Rule 90.3(c)(1).

¹⁰ See Civil Rule 90.3, Commentary VI.E.1.

have his other support order recalculated to include this support obligation for K. as a deduction, pursuant to Civil Rule 90.3(a)(1)(B). This should reduce his total child support obligation somewhat. But even if it does not, having monthly living expenses or debts that exceed one's net income does not automatically entitle a parent to a reduction in the child support calculated pursuant to Civil Rule 90.3. Mr. T.' financial obligations are minimal, so there doesn't appear to be much room in his budget for tightening his belt, so to speak. He may have to increase his hours at work or even find a second job, but Mr. T.' situation does not constitute "unusual circumstances."

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. T.' child support amount.

IV. Conclusion

Mr. T. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. CSSD correctly calculated his modified child support, which should be adopted.

V. Child Support Order

- Mr. T. is liable for modified ongoing child support in the amount of \$355 per month, effective May 1, 2006.

DATED this 28th day of August, 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 14th day of September, 2006.

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