

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

IN THE MATTER OF:)

C. M. F.)

OAH No. 06-0598-CSS

CSSD No. 001140085

DECISION AND ORDER

I. Introduction

This matter involves the Obligor C. M. F.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 14, 2006. The Obligee child is A., DOB 00/00/05.

The formal hearing was held on September 11, 2006. Mr. F. appeared in person with his attorney, Roger Holl; the Custodian, J. L. O., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 11, 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. F.'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 union dues and child support payments for his prior child, but he is not entitled to a reduction in child support based on financial hardship.

II. Facts

A. History

On May 25, 2006, CSSD served an Administrative Child and Medical Support Order on Mr. F.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on July 14, 2006, that set Mr. F.'s ongoing child support at \$770 per month, with arrears of \$11,315 for the period from

¹ Exh. 6.

² Exh. 7.

August 2005 through July 2006.³ Mr. F. filed an appeal and requested a formal hearing on August 11, 2006.⁴

B. Material Facts

Mr. F. and Ms. O. are the parents of A., DOB 00/00/05. Both parents live in Alaska and A. lives with Ms. O.

Mr. F. has a prior child named M., DOB 00/00/01, for whom he pays support of \$450 per month, pursuant to a court order.⁵ In 2005, he paid on the average \$520.83 per month. M.'s mother, R. H., provided receipts of Mr. F.'s support payments.⁶

In 2005, Mr. F. worked for Speedy Auto Glass in the first half of the year, then he began working for City Electric in the second half of the year. He earned more while employed for Speedy Auto Glass because he worked full time; his work for City Electric is not year-round employment.

Mr. F.'s total income in 2005 was \$95,039,⁷ and he paid union dues of \$63.27 per month.⁸ From his year-to-date information, his total 2006 income is estimated to be \$61,531.16. He currently pays union dues of \$126.54 per month, which equals about \$1518.48 per year. Using these figures from 2005 and 2006, Mr. F.'s child support is calculated at \$1068 per month and \$675 per month, respectively.⁹

Mr. F. lives with his girlfriend, T., and her two children, who are nine and 18 years of age. T. earns approximately \$2,000 per month; she and Mr. F. split household expenses more or less equally.

Mr. F. has regular household and living expenses of \$850 for rent; \$400 for food; \$192 for lunches; \$65 for electricity; \$35 for the house telephone; \$70 for cable; \$45 for natural gas; \$15 for trash pickup; \$40 for Internet service; \$136 for a cell phone; \$510 for the payment on 2002 GMC Denali; \$75 for vehicle maintenance; \$237 for vehicle insurance; \$40 for renter's insurance; \$200 for entertainment; \$300 for personal care items; and \$694 per month for five

³ Exh. 8.

⁴ Exh. 9.

⁵ Exh. 10 at pg. 25.

⁶ Exh. B.

⁷ Exh. 10 at pg. 6.

⁸ Record of hearing.

⁹ See Attachments A & B.

separate credit card payments with balances totaling between \$13,000-\$14,000. Mr. F. also has a \$5000 balance on a bank credit line, but the amount of his payment is unknown.

III. Discussion

Mr. F.'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. F.'s Income

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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 initially calculated Mr. F.'s 2005 child support at \$1185 per month, and his 2006 child support at \$770 per month.¹¹ CSSD used the correct income figures, but the calculations did not include a deduction for Mr. F.'s support payments for his prior child, nor were the union dues deductions correct. During the hearing, these figures were adjusted based on Mr. F.'s evidence, and the calculations were corrected to \$1068 and \$675 per month for 2005 and 2006. I find these calculations are correct, pursuant to Civil Rule 90.3.

B. Reduction in Child Support Based on Hardship

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

Mr. F.'s child support is now correctly calculated at \$1068 and \$675 per month for 2005 and 2006, respectively, based on his actual income figures. It is from these calculations that Mr. F.'s 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). 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:

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

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^[12]

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).¹³

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. F. 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 A.

Mr. F. believes he is incapable of meeting the child support obligation because his income is not sufficient to meet all of his financial obligations. Mr. F.'s bills are roughly on par with, if not somewhat higher than, the expenses incurred by many Alaskans. Mr. F. has a significant amount of consumer debt, but higher monthly living expenses or debts do not automatically entitle him to a reduction in the child support calculation. Mr. F. may have to make difficult budgeting decisions in light of this new child support obligation, especially because he pays for a prior child. But the deduction for Mr. F.'s payment for M. has already been calculated into the equation. A. is entitled to receive child support in an amount commensurate with Mr. F.'s ability to pay support, as measured by his income and calculated pursuant to Civil Rule 90.3.

Finally, Mr. F. requested consideration for visitation expenses in this case, but they are not warranted at this time. Ms. O. and A. live within driving distance of Anchorage, so it does not appear those expenses will be very high.

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

IV. Conclusion

Mr. F. 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

¹¹ Exh. 8 at pgs. 9-10.

¹² Civil Rule 90.3(c)(1).

¹³ See Civil Rule 90.3, Commentary VI.E.1.

now correctly calculated at \$1068 per month for 2005, and \$675 per month for 2006 and ongoing.

V. Child Support Order

- Mr. F. is liable for child support in the amount of \$1068 per month for August 2005 through December 2005; and \$675 per month for January 2006 through October 2006, and ongoing.

DATED this 2nd day of October, 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 30th day of October, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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