

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

In the matter of:)

T. B. F.)

OAH No. 06-0663-CSS

CSSD No. 001063194

DECISION AND ORDER

I. Introduction

T. F. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 1, 2006, increasing his support obligation from \$382 to \$560 per month effective May 1, 2006. The obligee child is I., born 00/00/96.

The formal hearing was held on October 12, 2006. Andrew J. Rawls, Child Support Specialist, represented CSSD. Mr. F. appeared in person and represented himself. The custodial parent, E. O. Z., also participated in person.

Income and deductions were not disputed at the hearing.¹ Mr. F. seeks a reduction in the modified support amount on the basis of hardship.

II. Facts

Ms. Z. has primary physical custody of I. Mr. F. was current with his child support until the modification.

Mr. F. works full time earns \$15.25 per hour for Alaska Native Tribal Health Consortium. In addition to his regular earnings, he earns substantial overtime and on-call pay. The parties have accepted his adjusted annual income, as calculated by CSSD, at \$35,584. His presumptive child support obligation under Rule 93 is \$6,717 per year or \$560 per month, and this is the support CSSD imposed under the modified order.

Mr. F. lives in a mobile home with three children, two of which are biologically his. He shares the home with the children's mother, but the two have no relationship at this time; they share household expenses and cooperate to raise the children. They do not administer finances

¹ Mr. F.'s income varies due to availability of overtime. His average income may very slightly exceed the figure CSSD used in its calculation, but he has an offsetting deduction for \$40 per month in retirement contributions that also was not reflected in the CSSD calculations. In light of these circumstances, no party advocated recalculating net income.

jointly. Although many expenses are split 50-50, Mr. F. pays the majority of expenses overall because he takes responsibility for the car payment on the single vehicle the household shares.

Both parents are employed full time, and Mr. F. works extra to achieve his income. One consequence of the family's work schedule is a large day-care expense of about \$520 per month for each parent. Mr. F.'s total monthly expenses, exclusive of any payment on his debts, come within about \$425 of his take-home pay. With a child support obligation of \$560, his expenses exclusive of debt payments will generally exceed his take home pay.

Mr. F.'s household lives quite simply. They reside in a mobile home. They share one vehicle, which he purchased in 2005 to replace a six-year-old vehicle. They spend almost nothing on entertainment, apart from cable television, and they have a relatively small food and personal care budget. Nothing is spent on alcohol or tobacco.

Ms. Z. also lives in a household with three children, all of them biologically hers, of whom one is I. They drive two late model vehicles and live in much more expensive housing than the F. household. They are able to afford entertainment/alcoholic beverage expenses that, in total, are about three times those of the F. household. For a household the same size, they spend more than twice as much on food as the F. household. Their income is uncertain; although Ms. Z. reported approximate take-home pay for each parent, her figures were not credible because they would not support the lifestyle she reported.² The preponderance of the evidence indicates that the income of the custodial parent's household greatly exceeds that of the obligor's household.

III. Discussion

When one parent has primary custody of the child, the other parent's child support obligation ordinarily is "calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2)."³ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions ..." which include the basic taxes, unemployment insurance, and support for a prior

² If the incomes were as reported, Ms. Z.'s household would be running a deficit of thousands of dollars each month. Ms. Z. did not indicate that such a financial crisis is occurring. Also, it is hard to accept that Ms. Z. could have been approved for a mortgage carrying a monthly payment of \$2043 and new car loans with payments totaling \$1314 if—as her testimony would indicate if accepted literally—this would represent 94.96 percent of the family's after-tax income. The Administrative Law Judge suspects that Ms. Z. simply made a computational error, such as reporting take-home pay per paycheck rather than monthly take-home pay.

³ See Alaska R. Civ. P. 90.3(a).

child that CSSD has deducted in its revised calculation.⁴ Child support for one child is calculated at 20% of the resulting figure.⁵ For Mr. F., the standard support amount is therefore \$6717 per year, or \$560 per month.

A child support obligation may be varied from the standard calculation if unusual circumstances exist and those circumstances make application of the usual formula unjust.⁶ The injustice, characterized as “manifest injustice” in the rule, must be demonstrated by clear and convincing evidence.⁷ The circumstances of the custodial parent must be considered when making the evaluation of whether there would be manifest injustice in applying the usual formula.⁸ The rule goes on to permit the tribunal to weigh the “amount of support which is just and proper for the parties to contribute toward the nurture and education of their children.”⁹ This inquiry is not limited to the child subject to the order: the tribunal “should reduce child support if the failure to do so would cause substantial hardship to the ‘subsequent’ children” of the obligor.¹⁰ Finally, the Alaska Supreme court has noted that

debts of the obligor, even if substantial, normally will not justify a reduction in support. The obligation to provide child support is more important than the obligation to fulfill most other obligations.¹¹

In keeping with this last principle, even though Mr. F. has substantial debts, his obligation to make payments on those debts has not been considered in this evaluation.

In this case, the contrast between the circumstances of the two households is quite dramatic. CSSD’s proposed support amount would place Mr. F. into a monthly deficit situation, even without servicing any of his debts. He already lives very modestly and he and his children have little access to entertainment or even to the occasional restaurant meal. In comparison to the children in the Z. household, the children in the F. household would be exposed to substantial hardship were the full increase in support imposed. It is clear that unusual circumstances exist to justify at least modest departure from the presumptive support amount.

⁴ Alaska R. Civ. P. 90.3(a)(1). The calculation is at Exhibit 4, p. 6.

⁵ Alaska R. Civ. P. 90.3(a)(2)(A).

⁶ Civil Rule 90.3 Commentary, Part IV-B.

⁷ Alaska R. Civ. P. 90.3(c)(1).

⁸ Civil Rule 90.3 Commentary, Part IV-B.

⁹ Alaska R. Civ. P. 90.3(c)(1).

¹⁰ Civil Rule 90.3 Commentary, Part IV-B-2.

¹¹ Civil Rule 90.3 Commentary, Part IV-B-4.

Because the law places such a high burden on a party seeking to depart from the guidelines, the departure must be as limited as possible. Here, a reduction of the support amount to \$425 per month should avoid making Mr. F. unable to meet even his present lean monthly budget. A reduction below \$425 has not been justified by clear and convincing evidence.

IV. Child Support Order

1. T. B. F. is liable for child support in the amount of \$425 per month effective May 1, 2006 and ongoing.

DATED this 13th day of October, 2006.

By: Signed
Christopher Kennedy
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 8th 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.]