

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

IN THE MATTER OF:)

A. S. N.)

) OAH No. 06-0688-CSS

) CSSD No. 001114603

DECISION AND ORDER

I. Introduction

The Obligor, A. S. N.,¹ appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 7, 2006. The Obligee child is A., DOB 00/00/02.

The hearing was held on October 24, 2006, and a supplemental hearing was held on January 24, 2007. Both Mr. N. and the Custodian, T. M. R., participated in both hearings. Andrew Rawls, Child Support Specialist, represented CSSD. The hearings were recorded.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearings. Based on the record as a whole and after due deliberation, Mr. N.'s child support is calculated at \$342 per month, effective April 2006 through February 2007, and ongoing.

II. Facts

A. History

Mr. N.'s child support obligation for A. was set at \$50 per month in March 2004.² Ms. R. requested a modification on March 23, 2006.³ On March 30, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴ Mr. N. provided income information.⁵ On September 7, 2006, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. N.'s modified ongoing child support at \$338 per month for one child, effective April 1, 2006, with a medical credit of \$94.41 per month, which resulted

¹ CSSD's documents spell the obligor's last name as "N.," but his signature and all of his financial documents use the spelling "N." See Exh. 3.

² Pre-Hearing Brief at pg. 1.

³ Exh. 1.

⁴ Exh. 2.

⁵ Exh. 3.

in a child support amount of \$244 per month.⁶ Mr. N. appealed on September 26, 2006, asserting he pays half of A.'s schooling and \$277.86 per month for medical and dental coverage, in addition to his other bills.⁷

Prior to the hearing, CSSD revised the child support calculation to \$342 per month to reflect the 2006 PFD amount; CSSD did not figure in a medical credit.⁸

B. Material Facts

Mr. N. formerly was employed by both Cable Tech and Pizza Hut.⁹ He earned an average of \$5839 per quarter from those employers during four consecutive quarters from mid-2005 through mid-2006.¹⁰ In late 2006, he went to work for a North Slope employer as a "cementing assistant" earning \$10.50 per hour on a 2 weeks-on, 2 weeks-off schedule.¹¹ The job was not as he expected, however, and he did not like it. Also, he found the long absences from Anchorage and his family unacceptable. Ms. R. also was unhappy with Mr. N.'s Slope job because he was not present for important events in the child A.'s life, such as both the Christmas holiday in 2006 and A.'s 5 year-old birthday in January 2007. After only two months working on the Slope, he returned to his job at Cable Tech, where he earns \$11 per hour.

Prior to the first hearing, Mr. N. had regular household expenses other than his child support obligation of approximately \$1600 per month, which includes \$290 for rent; \$410 for food; \$80 for a cell phone; \$295 for a car payment; \$150 for car insurance; \$40 for entertainment; \$30 for personal care items; \$15 for the co-pay on a chiropractor treatment; \$90 for a credit card payment; and \$200 for a student loan payment.¹² His roommate subsequently moved out of the apartment, so his rent is now \$425 per month.¹³ His car payment also increased to \$451 per month, although the reason for the change is unknown. Perhaps Mr. N. purchased a new car.

⁶ Exh. 4.

⁷ Exh. 5.

⁸ Exh. 6.

⁹ Except where indicated, the facts are taken from Mr. N.'s hearing testimony.

¹⁰ Exh. 8.

¹¹ Mr. N. was guaranteed 91 hours of work per week, which equals wages of \$1223.25 per week (($\10.50×40 hours = \$420) + ($\15.75×51 hours = \$803.25)). On an annual basis, this equals total wages of \$31,804.50 ($\1223.25×26 weeks). In addition to wages, Mr. N. received a 25% cost of living allowance (COLA), which added \$7951.12 to his annual income ($\$31,804.50 \times 25\%$). The total of these two figures is \$39,756.62. Mr. N. paid 4% of his income for retirement, which is \$1590.26 annually, or \$132.52 per month.¹¹ He did not pay union dues.

¹² Exh. 7.

¹³ See letter received January 4, 2007.

The Custodian, Ms. R., is the single mother of two children. She works at two jobs and with state assistance is able to send A. to the Anchorage Gymnastics Association for her schooling. The parties each pay about \$50 per month for the balance of A.'s tuition.

III. Discussion

A. Income

The first issue in this appeal is whether CSSD used the correct income figure in Mr. N.'s child support calculation. 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."¹⁴ If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and the support amount may be modified.¹⁵

Mr. N.'s child support was set at \$50 per month in 2004. CSSD calculated his modified child support at \$338 per month, with a \$94.41 per month medical credit, which totals \$244 per month for one child.¹⁶ The division used an annual income figure of \$23,357.49 in the calculation, which Mr. N. earned during the four consecutive quarters immediately prior to the order being issued.¹⁷ Before the hearing, CSSD revised the amount to \$342 per month, which reflects the correct amount for the 2006 PFD.¹⁸

Based on the evidence as a whole, CSSD correctly calculated Mr. N.'s modified child support amount at \$342 per month. The calculation is based on his actual annual income at the time the modification was requested. At the first hearing, CSSD suggested the parties could request another modification in the future so that Mr. N.'s child support could be calculated to reflect his job change to the North Slope and higher income. Rather than make the parties request another modification review, however, Mr. N.'s ongoing child support was calculated as of January 1, 2007, at \$534 per month, based on his specific testimony at the first hearing about

¹⁴ AS 25.27.190(e).

¹⁵ Civil Rule 90.3(h).

¹⁶ Exh. 4 at pg. 7.

¹⁷ *Id.*

¹⁸ Exh. 6.

the income and deductions he would be earning on the Slope.¹⁹ After the child support decision was issued, Mr. N. filed an objection and the supplemental hearing was held on January 24, 2007.

CSSD now asserts that Mr. N. is voluntarily and unreasonably underemployed as a result of leaving his job on the North Slope. An obligor parent has the burden of proving his or her earning capacity.²⁰ Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.²¹ If a parent is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income," which is based on the parent's "work history, qualifications and job opportunities."²² Thus, were CSSD's argument adopted, Mr. N.'s 2007 and ongoing child support could be calculated based on his North Slope job.

Based on the testimony from both hearings and the record as a whole, I find that even though Mr. N.'s termination from his job on the North Slope was voluntary, it was not an unreasonable decision for him to make at the time. He considered all of his circumstances, especially his relationship with A. and his other family members. Also, Ms. R. was unhappy with his decision to go to work on the Slope because it took him away from A. for important events in her life. Finally, Ms. R. testified at the supplemental hearing that the child support amount calculated for 2006 – \$342 per month – was a reasonable child support figure, and, in fact, that she thought the amount calculated for 2007 was too high for Mr. N. to pay after his return to his job in Anchorage.²³ Thus, Mr. N.'s child support is correctly calculated for both 2006 and 2007 at \$342 per month.

¹⁹ Mr. N.'s 2007 income was estimated at \$39,756.62, including COLA. That figure and his deductions were inserted into CSSD's online child support calculator, <http://www.childsupport.alaska.gov/>, which yielded the child support amount of \$534 per month, effective January 2007 and ongoing (Attachment A to the original decision, which contained that calculation, has been deleted).

²⁰ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

²¹ Civil Rule 90.3(a)(4).

²² Civil Rule 90.3, Commentary III.C.

²³ By law, child support obligations are calculated pursuant to Civil Rule 90.3, based on the paying parent's "total income from all sources." A party's "wishes" are not generally considered. However, in this particular case, Ms. R.'s position is relevant to the issue whether Mr. N. is voluntarily and unreasonably underemployed, given that she objected to his regular absences from Anchorage *for A.'s sake*, and she, as A.'s custodian, is the recipient of the child support payments. Also, it should be noted, Mr. N. made his decision to return to his Anchorage job partially in response to Ms. R.'s disapproval of his job change to the North Slope. Thus, for these reasons, her position that the 2006 child support amount of \$342 is adequate support is especially relevant.

B. Financial Hardship

The second issue in this appeal is whether Mr. N. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). He requested a reduction in his child support amount for a period of three months in order to catch up on bills.

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 there are "unusual circumstances" in a particular case, this 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^[24]

It is appropriate to consider all relevant evidence, including the circumstances of the Custodian and obligee child to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).²⁵ 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. N. 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. N.'s financial situation may have been somewhat strained after CSSD's modification order was issued because he previously paid only \$50 per month for support. But he is now fully employed, so Mr. N. should be able to catch up soon with back bills and any child support arrears that may have accrued when the modification went into effect. Since his overall financial obligations are not excessive, his situation does not constitute "unusual circumstances."

One final item should be discussed. Mr. N. has provided medical and dental coverage for A. in the past, but the calculations discussed herein do not address whether Mr. N. is entitled to a medical credit because the status of his insurance coverage was not known at the time of the

²⁴ Civil Rule 90.3(c)(1).

²⁵ See Civil Rule 90.3, Commentary VI.E.1.

hearing. CSSD can make the necessary adjustments in his child support amount after he provides the necessary insurance information from his employer.

IV. Conclusion

Mr. N. did not meet his burden of proving by a preponderance of the evidence that CSSD's determination of his child support obligation was incorrect, when calculated to reflect the proper 2006 PFD amount. His modified child support, effective April 2006 through February 2007, and ongoing, is correctly calculated at \$342 per month. This figure should be adopted.

V. Child Support Order

- Mr. N. is liable for modified child support in the amount of \$342 per month, effective April 2006 through February 2007, and ongoing.

DATED this 26th day of February, 2007.

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 1st day of March, 2007.

By: Signed
Signature
Jerry Burnett
Name
Director, Admin Services
Title

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