

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

IN THE MATTER OF:)

G. T.)

) OAH No. 07-0072-CSS

) CSSD No. 001095168

DECISION AND ORDER

I. Introduction

The Obligor, G. T., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 10, 2007. The Obligee children are M., DOB 00/00/96, J., DOB 00/00/97, and L., DOB 00/00/98.

The hearing was held on March 5, 2007. Both Mr. T. and the Custodian, M. L. P., participated. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on March 19, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, it is concluded CSSD correctly calculated Mr. T.'s modified child support amount and it should be adopted.

II. Facts

A. History

Mr. T.'s child support obligation for M., J. and L. was set at \$410 per month in September 1999. Mr. T. initiated modification of the order on October 15, 2006.¹ On October 27, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² On January 10, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T.'s modified ongoing child support at \$973 per month, effective November 1, 2006. Mr. T. appealed on February 5, 2007.³ Prior to the hearing, CSSD revised the calculation to \$1035 per month, based on Mr. T.'s actual income for 2006.⁴ CSSD also made a determination that, if Mr. T.'s income were averaged over the years from 2002-

¹ Exh. 1.

² Exh. 2.

³ Exh. 5.

⁴ Exh. 5.

2006, and his child support calculated from that figure, the result would still be \$1022 per month.⁵

B. Material Facts

Mr. T. and Ms. P. have three children, M., J. and L. The parties have been separated for many years and the children live with Ms. P. Mr. T. has a second family with three children in the home, all younger than the children of this case.

Mr. T. lives in B. M., where he is employed by the City of B. M. as a half-time power plant operator, rotating his shift with another operator. He earned \$14,703.68 from the City in the first three quarters of 2006.⁶ He may have earned another third of that amount during the fourth quarter of 2006, but that is not certain because it appears the City had not yet reported fourth quarter 2006 income by the date of the hearing.

Mr. T. is also employed by H. A. and F. F. S. In 2006, he received \$2291.20 from H. A. and \$22,997.70 from F. F. S.⁷ Finally, Mr. T. is helping build several housing units for the Bering Straits Regional Housing Authority. In 2006, he worked on that job during the fourth quarter of 2006 on a part-time basis, and was still there at the time of the hearing, although he testified the work was almost finished. He earned \$6602.85 from the housing authority in the fourth quarter 2006.⁸

III. Discussion

A. Mr. T.'s income

A parent is obligated both by statute and at common law to support his or her children.⁹ 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."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "good cause and material change in circumstances" has occurred and authorizes modification of the child support order.

⁵ Exh. 6.

⁶ Exh. 8 at pg. 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

Mr. T.'s child support was set at \$410 per month in 1999, based on an income amount of approximately \$16,000, plus the PFD.¹¹ After he requested a modification, CSSD calculated the modified child support amount at \$973 per month for three children, based on Mr. T.'s estimated 2006 income of \$43,271.17, plus the PFD.¹² Mr. T.'s actual income for 2006 was \$46,595.43, nearly three times the amount of his income in 1999. A child support amount calculated from his actual 2006 income is \$1035 per month for three children. A child support amount calculated from his average income from 2002-2006 is \$1022 per month.

Based on the evidence as a whole, I find the figure of \$1035 per month is the correct modified child support amount. This figure is derived from Mr. T.'s actual income and should be the child support amount at issue in this appeal.

B. 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 90.3(c). He requested a reduction in his child support amount because CSSD is garnishing nearly all of his pay and also because he works in construction, which is not a consistent source of income.

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^[13]

¹¹ Although Mr. T.'s exact income for the 1999 calculation is not known, it is possible to estimate the amount by inserting fictional numbers into CSSD's online child support calculator until the desired child support amount is reached. Here, an income figure of \$16,000, plus the PFD, resulted in a child support amount of \$408 per month for three children. That income figure is close enough for this discussion.

¹² CSSD estimated all four quarters of Mr. T.'s 2006 income from the first three quarters of 2006. See Exh. 3 at pg. 6.

¹³ Civil Rule 90.3(c)(1).

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 lowered.

Mr. T.'s financial situation may be strained as a result of the modification, but his testimony indicates a significant part of that strain is most likely the fact that his employers have been deducting more than the correct amount of support from his paychecks. CSSD explained to Mr. T. that the agency should only be collecting 40% of his net income, and suggested he have his employers contact CSSD to make sure they do not garnish more than the correct amount of support. Mr. T. also has a second family, but the existence of "subsequent" children does not generally constitute good cause to vary the guidelines,¹⁴ and there are not any facts in evidence in this case to alter that general rule.

While it is true that Mr. T. does generate some of his income from construction, the record indicates he has at least three consistent employers who paid him \$39,992.58 in 2006: the City of B. M., H. A., and F. F. S.¹⁵ The rest of his income – \$6602.85 in 2006 – was paid by the regional housing authority in the fourth quarter and may not be a year-long source of income for him in 2007. However, Mr. T. has substantial job skills and his employment history for the last several years indicates he has had a steady source of income, regardless of the source. As pointed out by CSSD, Mr. T.'s average annual income from 2002 through 2006 is \$45,912.40.¹⁶

Mr. T. also provided a list of his financial obligations. He has considerable consumer debt, but even so, Mr. T. purchased a new snow machine in January 2007, even though the modification action was already underway. Mr. T. must have known his child support could increase, especially since his income has almost tripled since it was calculated in 1999. Given this evidence, it cannot be said that Mr. T.'s situation constitutes "unusual circumstances" such that his child support calculated pursuant to Civil Rule 90.3 should be lowered.

IV. Conclusion

Mr. T. did not meet his burden of proving by clear and convincing evidence that he has a financial hardship that should result in his child support being lowered. CSSD correctly

¹⁴ Civil Rule 90.3, Commentary VI.B.2.

¹⁵ See Exh. 8.

¹⁶ See Exh. 6.

calculated Mr. T.'s modified child support at \$1035 per month, based on his actual income. This amount should be adopted.

V. Child Support Order

- Mr. T. is liable for modified ongoing child support in the amount of \$1035 per month, effective November 1, 2006.

DATED this 9th day of April, 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 May, 2007.

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

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