

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
FROM THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
C K. D ) OAH No. 18-0606-CSS  
 ) Agency No. 001219319  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves the establishment of a new child support order. C D appeals an Administrative Review Decision and Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD) on May 10, 2018. The order set his ongoing child support obligation for his daughter, D, at \$611 per month, effective June 1, 2018, with pre-order arrears of \$611 per month from January 1, 2017 through May 30, 2018. Mr. D asserted that he cannot afford the support amount, and he requested a reduction due to financial hardship.

This decision concludes that CSSD properly calculated Mr. D's support amount under the Civil Rule 90.3(a) formula. However, based on the evidence regarding Mr. D's financial circumstances, his request for a hardship variance is granted. Mr. D's support obligation should be adjusted to \$50 per month for January through December 2017, and \$300 per month beginning January 1, 2018 and ongoing.

**II. Facts and Proceedings**

*A. Material Facts*

Mr. D is the father of D, who is 8 years old.<sup>1</sup> In January 2017, D was placed in state-sponsored foster care.<sup>2</sup> As of late June 2018, she remained in state custody.<sup>3</sup>

In 2017, Mr. D worked a full-time union job, earning \$46,210 in gross annual wages.<sup>4</sup> At that job, he paid monthly union dues of \$150.36.<sup>5</sup> He changed to a non-union job in the spring of 2018. He currently works full-time and earns \$21 per hour.<sup>6</sup> At this wage, he expects to earn

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<sup>1</sup> Exhibit 5. CSSD established paternity by referencing Bureau of Vital Statistics records, which show that Mr. D executed a voluntary acknowledgment of paternity, and his name appears on D's birth certificate. CSSD pre-hearing brief, p. 1. Mr. D did not contest paternity.

<sup>2</sup> See Exhibit 3.

<sup>3</sup> She may have been placed with her mother on a temporary basis during the spring of 2018, however.

<sup>4</sup> See Exhibit 3, p. 8; Exhibit 4, p. 13; Exhibit 7; D testimony.

<sup>5</sup> See Exhibit 5, p. 7.

<sup>6</sup> D testimony; Exhibit 5, p. 11.

\$43,680 in gross wages annually. His monthly out-of-pocket cost for his own health insurance at his current job is \$151.25.<sup>7</sup> This includes medical, dental, and vision coverage.

Mr. D lives alone. His monthly expenses include: \$1,265 for rent; \$600 for food; \$300 for electricity and other utilities; \$100 for internet; and \$75-100 for his cell phone.<sup>8</sup> He drives a 1997 Astro van that is paid off. He spends approximately \$50 per week on gas (\$200 per month), \$200 per month on maintenance/repairs, and \$100 per month on car insurance.<sup>9</sup> He did not identify any expenses for dining outside the home, entertainment, or personal care.

These expenses total approximately \$2,915 per month. Taken as a whole, Mr. D's monthly expenses are necessary and reasonable. His food budget is high for a household of one, but that is likely offset by Mr. D's failure to identify some expenses such as personal care costs.

### *B. Procedural Background*

On June 14, 2017, after CSSD became aware that the Office of Children's Services (OCS) was providing active foster care for D, it issued an order requiring Mr. D to provide his financial information.<sup>10</sup> Based on the information Mr. D submitted, CSSD issued an Administrative Child and Medical Support Order on August 25, 2017, setting Mr. D's ongoing and pre-order arrears support amount at \$679 per month.<sup>11</sup> That order was not served on Mr. D until February 12, 2018.<sup>12</sup>

Mr. D timely requested an administrative review hearing, which took place on March 22, 2018.<sup>13</sup> On May 10, 2018, CSSD issued the Administrative Review Hearing Decision and Amended Child and Medical Support Order that are the subject of this formal appeal.<sup>14</sup> The administrative review decision and amended order adjusted the ongoing and pre-order arrears amount to \$611 per month. They rejected Mr. D's request for a hardship variance.

Mr. D requested a formal hearing.<sup>15</sup> He objected to the establishment of a child support order, asserting that OCS had wrongfully assumed custody of D. He submitted approximately 70 documents to the record, nearly all of which pertained to the Child-in-Need-of-Aid matter in

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<sup>7</sup> CSSD submission, 6/28/18; D submission, 7/5/18.

<sup>8</sup> D testimony. Mr. D indicated that he actually spends \$150 to \$200 each month for two cell phones, but one is his mother's. That expense is therefore excluded from this calculation.

<sup>9</sup> *Id.*

<sup>10</sup> Exhibit 1; CSSD pre-hearing brief, p. 1.

<sup>11</sup> Exhibit 3.

<sup>12</sup> Exhibit 3, p. 11.

<sup>13</sup> Exhibit 5, p. 10.

<sup>14</sup> Exhibit 5.

<sup>15</sup> Exhibit 6.

superior court rather than his financial circumstances. He also argued that he cannot afford the ordered child support amount, and he requested a hardship variance.

The formal hearing took place by telephone on June 28, 2018. Mr. D represented himself and testified on his own behalf. He was assisted by his mother, T N, and by N E. Child Support Specialist Patrick Kase represented CSSD. The hearing was audio-recorded. The record remained open after the hearing until July 6, 2018, so Mr. D could confirm his out-of-pocket cost for his own health insurance.

### III. Discussion

In child support matters, the person who files an appeal bears the burden of proof.<sup>16</sup> Mr. D filed this appeal, so he must prove by a preponderance of the evidence that the May 10, 2018 Amended Administrative Child and Medical Support Order is incorrect.<sup>17</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>18</sup> In cases establishing a support obligation for the first time, CSSD collects child support from the date the custodial parent requested child support services or the date that public assistance or state-sponsored foster care was provided on behalf of the child.<sup>19</sup> In this case, foster care began in January 2017, so that is the month Mr. D's obligation to support D through CSSD begins.

#### A. Child Support Determination Under Civil Rule 90.3(a)

Civil Rule 90.3(a) provides the formula for calculating a noncustodial parent's child support obligation. The calculation is based on the parent's "total income from all sources," minus specified deductions. The support obligation is based on the amount the parent can be expected to earn during the period for which the support is being paid. By its nature, this determination is a somewhat uncertain endeavor, since the relevant calculation includes expected future income.<sup>20</sup>

Mr. D agreed that his 2017 gross income included his wages, \$46,210, plus the Permanent Fund Dividend (PFD). After all applicable deductions from income, including \$150.36 in monthly union dues, this income resulted in a support amount of \$611 per month.<sup>21</sup>

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<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> 2 AAC 64.290(e).

<sup>18</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>19</sup> 15 AAC 125.105(a)(1)-(2).

<sup>20</sup> Civil Rule 90.3, Commentary III.E.

<sup>21</sup> See Exhibit 5, p. 7.

This calculation is based on Mr. D's actual income and allowable deductions. No error was shown.

For 2018, Mr. D agreed that his \$21 hourly wage results in gross annual income of \$43,680 over a full-time schedule. He no longer pays union dues, so he is not eligible for that deduction. Based on information provided by his employer and later confirmed by Mr. D, CSSD included a monthly deduction of \$151.25 for Mr. D's out-of-pocket cost for his own health insurance.

After all applicable deductions, Mr. D's expected 2018 income (including the PFD) results in a child support amount of \$594 per month.<sup>22</sup> This is \$17, or 3%, less than the 2017 amount, so it does not constitute a material change of circumstances.<sup>23</sup> Therefore, CSSD appropriately carried the \$611 amount through as the 2018 and ongoing support amount.

*B. Hardship Variance under Civil Rule 90.3(c)*

Child support determinations calculated under Civil Rule 90.3 from a noncustodial parent'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. 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.<sup>24</sup> This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Mr. D argued that he is unable to pay his necessary living expenses as well as the child support amount calculated under Rule 90.3(a). He expressed concerns about his substantial arrears balance, noting that the child support order dates back 18 months, to January 2017. He argued that he cannot afford either the arrears or the ongoing amount. He credibly testified that those obligations would leave him unable to afford his rent. If he loses his home, he likely will not have overnight visitation or future custody of D. Mr. D also indicated that he has substantial debts because of legal expenses incurred in the custody proceedings in superior court. These include accrued debt of \$10,000 and ongoing expenses of \$500 per month for his legal representation. In addition, Mr. D owes \$180 per month on a bank loan; \$300 per month to Mr.

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<sup>22</sup> See Exhibit 5, p. 8.

<sup>23</sup> See *Duffus v. Duffus*, 72 P.3d 313 (Alaska 2003).  $(611-594) / 611 = 3\%$ .

<sup>24</sup> Civil Rule 90.3(c); see also 15 AAC 12.075.

E for a personal loan; and \$180 per month on a loan for a motorcycle that he considers necessary as backup transportation.

Based on the evidence in the record, Mr. D's 2018 average adjusted monthly income is \$2,972.<sup>25</sup> His living expenses are approximately \$2,915 per month, or \$57 less than his monthly income. In general, Mr. D's outstanding debts and legal expenses do not establish a hardship, and his motorcycle debt in particular is given no consideration. Despite his stressed financial circumstances, his obligation to financially support his daughter is deemed to take precedence over other debts and obligations. However, it is noted that the vast majority of Mr. D's debt burden relates directly to his efforts to regain custody of D. In part for this reason, his case presents unusual circumstances.

During the hearing, the CSSD hearing representative agreed that unusual circumstances exist, and Mr. D's support obligation should be varied under Civil Rule 90.3(c). For his 2017 obligation, CSSD proposed a reduction to the state minimum amount, \$50 per month. For 2018 and ongoing, it proposed \$300 per month.

Based on the evidence and CSSD's agreement regarding hardship, Mr. D has met his burden to show clear and convincing evidence that manifest injustice would result if he must pay the child support amount calculated under Civil Rule 90.3(a) in his current circumstances. CSSD's proposed resolution appropriately balances Mr. D's circumstances, and it should be adopted. As CSSD noted, the lengthy period of pre-order arrears in this case threatens to create an unmanageable burden for Mr. D going forward. Therefore, a \$50 monthly obligation for 2017 should be adopted. The significant reduction for 2017 is balanced by emphasizing Mr. D's ongoing financial responsibility to support D. Though his finances are clearly strained and the ongoing amount will not be easy for Mr. D, this balance recognizes that he likely could make some additional adjustments to his budget, either by further reducing some expenses or by seeking opportunities for additional income.

This decision takes into consideration D's circumstances in active foster care. Because of her custody status, her mother is not a party to this action. The record therefore includes no evidence of her mother's financial circumstances, and they were not considered.

Based on financial hardship, Mr. D's monthly support amount for D should be set at \$50 per month for January through December 2017, and \$300 per month beginning January 1, 2018

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<sup>25</sup> Gross annual income (\$44,780) less deductions (\$759.43 x 12), and divided by 12 months, is \$2,972.24.

and ongoing. This amount will require Mr. D to make difficult budgetary decisions. At the same time, it should avoid imposing on him an unsustainable financial burden.

#### **IV. Conclusion**

Mr. D met his burden to show that the Amended Administrative Child and Medical Support Order dated May 10, 2018, should be varied based on financial hardship and unusual circumstances. Under the Civil Rule 90.3(a) formula, his income would result in a support amount of \$611 per month, effective January 1, 2017 and ongoing. The Civil Rule 90.3(c) variance results in a \$50 monthly obligation for 2017 and a \$300 obligation for January 2018 and ongoing.

#### **V. Child Support Order**

- Mr. D is liable for child support for D in the amount of \$50 per month for the months of January 2017 through December 2017;
- Mr. D's support amount is adjusted to \$300 per month, effective January 1, 2018 and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated May 10, 2018, remain in full force and effect.

DATED: July 9, 2018.

By: *Signed*

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

#### **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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 24<sup>th</sup> day of July, 2018.

By: *Signed*  
Name: Karen L. Loeffler  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]