

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

In the Matter of)	
)	
E X)	OAH No. 18-0873-CSS
)	Agency No. 001165473
_____)	

DECISION AND ORDER

I. Introduction

This case involves the establishment of E X’s child support obligation for his son, L, who is currently 9 years old. Mr. X appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 14, 2018. The amended child support order set Mr. X’s obligation at \$491 per month, effective September 1, 2018 and ongoing. It also set pre-order arrears totaling \$8,898 for the period from November 1, 2016 through August 31, 2018. Mr. X argues he cannot afford the ordered amount.

The record supports CSSD’s calculations under the Civil Rule 90.3(a) primary custody formula. However, Mr. X showed that his obligation for pre-order arrears from November 2016 through May 2018 should be adjusted to \$100 per month under Civil Rule 90.3(c), due to financial hardship and unusual circumstances. For June 1, 2018 and ongoing, Mr. X did not meet his high burden to justify a variance. That obligation therefore remains \$491 per month.

II. Facts

A. Material Facts

Mr. X and custodial parent O Q are the parents of L, who was born in 2009. Mr. X and Ms. Q met in California, where Mr. X lives. After the relationship ended, Ms. Q moved to Alaska, where she and L still live.

Until late December 2017, when he received a Notice of Paternity and Financial Responsibility, Mr. X was entirely unaware he may have fathered a child with Ms. Q.¹ At that time, L was eight years old. Subsequent genetic testing verified that Mr. X is L’s biological

¹ X testimony; Exhibit 1.

father, and CSSD issued an Order Establishing Paternity on May 15, 2018.² Mr. X does not dispute paternity.³

Mr. X is married; his wife lives in No Name, Kenya. Mr. X is currently working through the immigration process to bring her to the U.S. His wife lives with and cares for two of Mr. X's nieces or nephews, ages 10 and 12.⁴ Mr. X and his wife are providing for the children because the war in South Sudan has made it unsafe for them to live there with their father, Mr. X's brother.⁵ Mr. X sends \$700 each month to his wife, to provide for her needs and those of the two children.⁶ He considers this a primary obligation.

Mr. X has been working as a security guard for the same employer since at least 2016.⁷ He currently earns \$14.95 per hour and works a full-time schedule. At this wage, his expected 2018 regular-time gross pay will total \$31,096 for the year.⁸ Mr. X also works overtime hours whenever he can, though his opportunities vary from pay period to pay period. In recent months, he has worked overtime on a regular basis. As of June 30, 2018, his year-to-date gross wages were \$20,164.15, including overtime.⁹ According to Mr. X, he does not expect to continue earning at this rate for the remainder of the year.

In 2016, Mr. X earned gross wages totaling \$32,758.¹⁰ He earned this income working full-time throughout the year, including overtime, for his current employer. In 2017, his gross wages were \$24,626.¹¹ However, Mr. X spent at least four months in Africa between January and June 2017, to help care for his mother. This reduced his total income for the year.

Mr. X lives very frugally so he can financially support his wife and nieces or nephews in Africa. He shares a rented apartment with his cousin. Normally, he and his cousin split the \$1,200 monthly rent. Currently, a third person is living in the home, so each person pays \$400 for

² Exhibit 1, p. 1.

³ Mr. X also does not contest Alaska's jurisdiction to issue a child support order. However, during the hearing, he clarified that he has never been to Alaska, and the paternity testing paperwork incorrectly indicated that L was conceived in Alaska. Mr. X also expressed concerns because he was not involved in naming the child, which he said is a violation of South Sudanese cultural norms. Mr. X understood that this concern falls outside the scope of this administrative hearing.

⁴ It is not clear whether the children are boys or girls, so this decision refers to them as nieces or nephews.

⁵ X testimony.

⁶ X testimony; Exhibit 3, pp. 5-6.

⁷ Exhibit 7.

⁸ \$14.95/hour x 40 hours/week x 52 weeks/year = \$31,096.

⁹ Exhibit 4, p. 2.

¹⁰ Exhibit 4, pp. 10-12. His 2015 wages totaled \$23,151. Exhibit 4, p. 13-14. The record is not clear whether he worked full-time throughout 2015 or whether he earned this income as a security guard.

¹¹ Exhibit 4, pp. 4-9.

rent. Because this is a temporary situation, this decision is based on Mr. X's expenses in a two-person home. Mr. X's share of other monthly expenses include: \$300 for food, \$80 for gas and electric, and \$143 for cell phone fees. He testified that he spends \$145 for internet and cable, but this appears to be the total monthly bill rather than Mr. X's half. His share of that expense should be \$73. Mr. X owns a car that is paid off. He spends roughly \$172 per month for gas,¹² \$65 per month for maintenance,¹³ and \$55 per month for insurance.¹⁴ He did not provide detailed information regarding other expenses for entertainment, personal care, or other expenses, though he undoubtedly incurs some additional monthly costs. He indicated that he spent \$450 for entertainment in recent months. This decision assumes Mr. X incurs total annual expenses of \$900 (\$75 per month) for entertainment, personal care, and other needs. Mr. X has one significant debt, a \$6,000 student loan, on which he pays \$93 per month. These expenses are all reasonable and appropriate. They total \$1,656 per month.

Mr. X's single largest monthly expense is the \$700 he wires to Africa each month to support his wife and his brother's two children. When this expense is included in his monthly budget, he spends \$2,356 per month.

The record does not include detailed evidence regarding Ms. Q's living situation, income or expenses. However, she qualified for and received public assistance from November 2016 through April 2017, and she again has been receiving assistance since June 2018. This indicates that her finances are strained.¹⁵

B. Procedural History

Ms. Q and L began receiving public assistance benefits in November 2016.¹⁶ In May 2018, CSSD established Mr. X's paternity, and it began the process of establishing his child support obligation for L. On June 18, 2018, it issued an Administrative Child Support and Medical Support Order.¹⁷ After an Administrative Review Hearing that included recent income information, CSSD issued an Administrative Review Hearing Decision and Amended Administrative Child Support and Medical Support Order on August 14, 2018.¹⁸ The amended

¹² \$40 per week x 4.3 weeks/month = \$172.

¹³ \$780 per year / 12 months = \$65.

¹⁴ \$660 per year / 12 months = \$55.

¹⁵ See Exhibit 2, p. 9.

¹⁶ *Id.*

¹⁷ Exhibit 2.

¹⁸ Exhibits 3, 4, 5.

order set Mr. X's ongoing child support amount at \$491 per month, effective September 1, 2018, with arrears totaling \$8,898 for the period from November 2016 through August 2018.¹⁹

Mr. X requested a formal hearing, arguing that he cannot afford the ordered amount.²⁰ The formal hearing took place by telephone on September 13, 2018. Mr. X and Ms. Q represented themselves and testified for themselves. Child Support Specialist Patrick Kase represented CSSD. The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

III. Discussion

As the person who filed the appeal in this case, Mr. X bears the burden of proof. As to the support amount calculated under the Civil Rule 90.3(a) primary custody formula and applied in the Amended Administrative Child Support and Medical Support Order, his burden is to show by a preponderance of the evidence that the calculation is incorrect.²¹ Regarding his request for a variance based on financial hardship and unusual circumstances, Mr. X must show clear and convincing evidence that manifest injustice would result if the support award were not varied.²²

A. Child Support Calculation under Civil Rule 90.3(a)

A parent is obligated both by statute and at common law to support his or her children.²³ When public assistance is paid on behalf of a child to whom a noncustodial parent owes a duty of support, the parent (called an "obligor") is liable to the state for the assistance provided, up to the amount set in a child support order.²⁴

In cases established administratively by CSSD, the agency collects support from the date the custodial parent requested child support services or the date public assistance was initiated on behalf of the child.²⁵ Here, L began receiving public assistance in November 2016, so that is the month Mr. X's obligation to support him through CSSD begins.

Mr. X argued that he was completely unaware he may have had a child with Ms. Q until late December 2017, when he was served with a Notice of Paternity and Financial Responsibility. His paternity was not confirmed until May 2018, when genetic testing was complete and OCS

¹⁹ Exhibit 5.

²⁰ Exhibit 6.

²¹ 15 AAC 05.030(h).

²² Civil Rule 90.3(c).

²³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁴ AS 25.27.120(a).

²⁵ 15 AAC 125.105(a)(1)-(2).

issued an Order Establishing Paternity. He suggested that his child support obligation should not begin before that time. The Alaska Supreme Court has acknowledged the potential for unfairness to biological fathers like Mr. X, who may not have known about a child until years after the child's birth, when ensuing support arrearages can be economically crushing. Despite this, the Court has emphasized that the duty of parental support begins when the child is born.²⁶ Under existing law, a tribunal cannot adjust the effective date of a parent's child support obligation, such as by limiting it to the date paternity was established.²⁷ For this reason, the effective date of Mr. X's support obligation cannot be changed.

Though the effective date of Mr. X's support obligation necessarily begins in November 2016, the Alaska Supreme Court has stated that the totality of the circumstances can be considered when deciding whether a variance of the pre-order arrears amount is warranted under Civil Rule 90.3(c).²⁸ Mr. X's ability to pay the ordered arrears for the months before his paternity was established is therefore addressed as part of his request for a variance.

1. Income Determinations

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support amount is to be calculated based on his or her "total income from all sources," minus specified mandatory deductions, such as federal, state, and local income taxes, and Social Security.

For 2016 and 2017, CSSD calculated Mr. X's pre-order support amounts based on his gross income from his federal income tax forms. Mr. X does not dispute these amounts.

For 2018, CSSD estimated Mr. X's expected gross income at \$36,208 by annualizing the income he earned during the 1st Quarter of 2018.²⁹ Mr. X argued that he expects to earn gross wages closer to \$28,000, noting that he does not always have opportunities for overtime hours. However, his paystub for the pay period ending June 30th shows he had already earned \$20,164.15 by mid-year, including overtime pay. Mr. X has not shown that CSSD erred in its 2018 income estimate.

2. Allowable Deductions

²⁶ See *Skinner v. Hagberg*, 183 P.3d 486, 490 (Alaska 2008); *State, Dep't of Revenue, Child Support Enforcement Div., ex rel. Hawthorne v. Rios*, 938 P.2d 1013 (Alaska 1997).

²⁷ *Skinner*, 183 P.3d at 490.

²⁸ *Id.*

²⁹ Exhibit 5, p. 12.

When it calculated Mr. X's adjusted gross income, CSSD allowed deductions for his federal and California income taxes as well as his Social Security and Medicare contributions. The evidence presented raised questions about other potentially allowable deductions, but Mr. X did not show he is entitled to any additional deductions.

Mr. X testified that his out-of-pocket expense for his own health insurance premiums is \$60 per month. This expense should be easy to document. However, the paystubs in the record do not show any paycheck deductions for Mr. X's own health insurance. Since the record does not include documented evidence of this expense, Mr. X is not currently eligible for this deduction.

Mr. X's 2016 and 2017 federal tax returns show he claimed significant amounts as unreimbursed employee expenses.³⁰ These apparently pertain to expenses for matters such as work-related travel and education. Even though these expenses may be deductible for federal income tax purposes, they are not allowable as deductions for purposes of his child support calculation.³¹

In addition, Mr. X is not eligible for a deduction for child support paid on behalf of prior children from previous relationships. Despite his moral sense of obligation to support his brother's children, which is commendable, Mr. X did not show that his nieces or nephews in Kenya are "prior children" within the meaning of Civil Rule 90.3.³² It does not appear he has a legal obligation to financially support them, as he has not adopted them, and his monthly support payments are not required by any court or administrative proceedings.³³ Finally, Mr. X's payments to support his wife in Kenya do not qualify for a deduction as spousal support for a former spouse.³⁴

3. Child Support Amount under Civil Rule 90.3(a)

The evidence supports CSSD's determination of Mr. X's actual gross income and allowable deductions during the months of 2016 and 2017 for which he owes pre-order arrears.

³⁰ Exhibit 4, pp. 8, 12 (\$11,086 in 2016; \$27,591 in 2017).

³¹ See Civil Rule 90.3(a)(1).

³² See Civil Rule 90.3(a)(1)(C)(i).

³³ Because the children are not in his physical custody, the deduction recognizing in-kind support provided for prior children in the parent's primary or shared physical custody also is not applicable here.

³⁴ See Civil Rule 90.3(a)(1)(C)(ii).

Under the primary custody formula at Civil Rule 90.3(a), Mr. X's adjusted annual income resulted in a support obligation of \$439 per month for November and December 2016 and \$341 for each month of 2017. The evidence also supports CSSD's calculation of Mr. X's 2018 and ongoing obligation, resulting in a \$491 monthly support obligation.

B. Variance Under Civil Rule 90.3(c)

Mr. X's primary argument on appeal is that he is unable to pay the ordered support amount for L while also meeting his financial obligations to his wife and nieces or nephews in Kenya. Child support determinations calculated under Civil Rule 90.3(a) are presumed to be correct. An obligor-parent may obtain a reduction in the ongoing or pre-order arrears support amount, but only if he or she shows that "good cause" exists for the reduction.³⁵ To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.³⁶ 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.

Here, Mr. X has shown that unusual circumstances make application of the Civil Rule 90.3(a) formula unjust for purposes of determining pre-order arrears for the period from November 2016 through May 2018. Until late December 2017, Mr. X was entirely unaware he had fathered a child with Ms. Q, and he could have not have adjusted either his income or his expenses in anticipation of paying child support. Between January and May 2018, Mr. X's paternity was still highly uncertain, and his ability to effectively adjust his budget and plan for a significant child support obligation was limited. Further, Mr. X's financial circumstances are such that he does not accumulate savings quickly, and he likely will be unable to pay off the significant arrears and accumulating interest for an extended time period. The ordered arrears therefore pose an unmanageable and unjust burden for him going forward.

To mitigate this burden and provide Mr. X an opportunity to stay current with his support obligation, his pre-order arrears for the period from November 2016 through May 2018 (when genetic testing was complete and paternity established) should be set at \$100 per month. This, too, will be financially difficult for him while he also pays his ongoing obligation. However, it seeks to balance his financial difficulty in paying pre-order child support with Ms. Q's financial

³⁵ See *Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

³⁶ Civil Rule 90.3(c).

circumstances, which also are clearly strained. The reduction is balanced by emphasizing Mr. X's ongoing financial responsibility to support L.

For June 1, 2018 and ongoing, Mr. X did not show clear and convincing evidence that the amount calculated under the regular child support formula is manifestly unjust. His obligation to support his wife and nieces and nephews in Kenya is understood, and his strong desire to send them \$700 per month is acknowledged. However, Mr. X did not explain whether his wife or his brother are also providing some financial support for the children, and he did not explain why his support amount necessarily must be \$700 each month. Under Alaska law, his obligation to financially support L is primary.

Under CSSD's child support calculation, Mr. X's 2018 adjusted annual income is expected to be approximately \$29,447.56.³⁷ Including his student loan payments, his annual living expenses total \$19,872.³⁸ When his \$491 monthly support for L is included, Mr. X's annual expenses come to \$25,764.³⁹ This leaves \$3,683.56 for other uses, such as support for Mr. X's wife and brother's children in Kenya. Mr. X's year-to-date wages as of June 30, 2018 suggest he may earn up to \$4,000 more in gross overtime wages than CSSD included in its 2018 calculation. Any net income above CSSD's determination is also available to support his family in Africa. This evidence suggests that Mr. X can support L, while also providing significant ongoing support to his wife, if he carefully budgets his expenses and continues working overtime similar to his schedule during the first half of 2018.

C. Income Withholding

During the hearing, Mr. X stated that the current rate of income withholding from his paycheck is causing him additional financial hardship. The amount withheld is significant because it includes his ongoing support amount as well as a portion of the arrears, as calculated under the amended child support order. Because Mr. X's pre-order obligation has been reduced in this decision, his withholding amount is likely to change.

As the CSSD hearing representative explained during the hearing, Mr. X also may request a modification of his income withholding amount based on hardship.⁴⁰ This is a separate process,

³⁷ Exhibit 5, p. 12.

³⁸ \$1,656/month x 12 months = \$19,872.

³⁹ \$491/month x 12 months = \$5,892. \$5,892 + \$19,872 = \$25,764.

⁴⁰ See 15 AAC 125.550.

however, and this issue cannot be resolved in this appeal. To pursue this request, Mr. X should contact his CSSD caseworker.

IV. Conclusion

The evidence at hearing showed that CSSD correctly calculated Mr. X's child support obligation under the primary custody formula at Civil Rule 90.3(a). However, Mr. X showed that unusual circumstances justify a reduction of his pre-order arrears through May 2018. For the period from November 2016 through May 2018, Mr. X's obligation should be set at \$100 per month under Civil Rule 90.3(c). Mr. X did not meet his high burden as to his support amount starting June 2018, and his request for a variance of that obligation is denied. Beginning June 1, 2018 and ongoing, Mr. X's support amount for L remains \$491 per month.

V. Child Support Order

- Mr. X is liable for child support for L in the amount of \$100 per month, effective November 1, 2016 through May 2018;
- Mr. X's is liable for child support of \$491 per month, effective June 1, 2018 and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated August 14, 2018 remain in full force and effect.

DATED: September 27, 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 11th day of October, 2018.

By: *Signed*

Name: Kathryn A. Swiderski

Title: Administrative Law Judge

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