

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

In the Matter of)	
)	
K D)	OAH No. 18-1338-CSS
_____)	Agency No. 001188452

DECISION AND ORDER

I. Introduction

K D appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 9, 2018. The order removed one child from Mr. D’s case because the superior court disestablished paternity. It then modified the ongoing support amount to \$915 per month for the two remaining children on the order, H and F. Mr. D appealed.

Through the evidence produced in the hearing process, Mr. D showed that the support order should be adjusted. After applicable deductions, including deductions for his retirement contributions, cost of his own health insurance premiums, and child support for a child from another relationship who is older than F but younger than H, Mr. D’s income results in a support amount of \$829 per month for two children. The Modified Administrative Child Support and Medical Support Order dated October 9, 2018 is adjusted to reflect this obligation, effective July 1, 2018 and ongoing.

II. Facts

K D and H N are the parents of H, age 12, and F, age 4. The children live with their mother in Anchorage. Mr. D also lives in Anchorage.

A. Procedural Background

Mr. D’s child support obligation was last reviewed in 2014 and 2015. At that time, Mr. D was the legal father of H, F, and a third child with Ms. N, K.¹ On November 4, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that initially set the ongoing amount at \$844 for three children.² After an administrative appeal, on May 8, 2015, the

¹ Exhibit 1.
² *Id.*

Commissioner of Revenue issued a final decision that adjusted the support amount to \$983 for three children.³ The \$983 monthly amount has been in effect since that time.

In April 2018, based on DNA testing that identified another man as K's father, the superior court issued an order disestablishing paternity of K and removing Mr. D from her birth certificate. The court also ordered a modification review so Mr. D would not be responsible for future child support for K.⁴

CSSD received the court order on June 26, 2018, and it served a notice of the petition for a modification on each parent the next day.⁵ Mr. D provided his income information.⁶ On October 9, 2018, CSSD granted the modification and issued the Modified Administrative Child Support and Medical Support Order at issue in this appeal. The order set the new support amount for two children at \$915 per month, effective July 1, 2018 and ongoing.⁷ Mr. D appealed, asserting that he cannot afford the ordered amount and meet his other financial obligations.⁸

The formal hearing took place in three sessions: on January 23, 2019; February 21, 2019; and February 26, 2019. Mr. D appeared in person for the first hearing and telephonically for the third. He did not appear for the second hearing. Ms. N appeared telephonically for the first and third sessions. Each parent testified. A Spanish interpreter translated when the parents were participating. Child Support Specialist Brandi Estes represented CSSD. The hearing was audio-recorded. All submitted exhibits were admitted to the record, which closed on February 26, 2019.

B. Material Facts

Mr. D works on the North Slope as a cook assistant. He works a two-week-on, two-week-off schedule. In 2018, he earned gross wages \$51,735.43.⁹ He expects to earn roughly the same amount in 2019. He receives the PFD.

Mr. D makes contributions to a 401k retirement plan. His 2018 contributions totaled \$2,480.35, or \$206.70 per month.¹⁰ He also pays \$207.20 each month for his own medical, dental,

³ *In re K D*, OAH No. 14-2055-CSS (Comm'r of Revenue, May 8, 2015). The November 4, 2014 Modified Administrative Child Support and Medical Support Order otherwise remained in full force and effect. During the hearing on February 26, 2019, the undersigned inadvertently overlooked the administrative appeal and incorrectly stated that the prior support amount was \$844 per month.

⁴ Exhibit 2.

⁵ Exhibits 2, 3.

⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ D submission received 2/15/19 (2018 W-2 form).

¹⁰ *Id.* (Box 12a annual contribution of \$2,480.35 / 12 months = \$206.70).

and vision insurance coverage.¹¹ Mr. D has another child from a different relationship who lives in the Dominican Republic. That child, T, is six years old. She is younger than H but older than F. Mr. D's divorce decree from the Dominican Republic orders him to pay 5,000 Dominican Pesos per month to support T. At the current exchange rate, this converts to approximately \$99 per month in U.S. dollars.¹² In practice, though, Mr. D sends \$125 per month in U.S. dollars to support T.

III. Discussion

As the person who filed the appeal, Mr. D bears the burden to show by a preponderance of the evidence that CSSD made a mistake in calculating his modified support amount.¹³ Through the information he provided in the hearing process, he met this burden.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ In this case, good cause and a material change of circumstances was established by the need to remove a child from the prior child support order. A modification is effective beginning the month after the parties are served with notice of the modification request.¹⁵ Therefore, this modification is effective as of July 1, 2018.

Under the primary custody formula at Civil Rule 90.3(a), a parent's child support obligation is calculated based on his or her "total income from all sources" during the period for which the support is being paid.¹⁶ By its nature, this determination can be a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.¹⁷

Once a parent's total income from all sources is determined, Civil Rule 90.3 requires a determination of adjusted annual income. This is calculated by subtracting certain deductions from the total income figure. Mandatory deductions include matters such as federal income taxes, Social Security/Medicare withholding, mandatory union dues, and mandatory contributions to a retirement plan.¹⁸ Deductions are also available for voluntary contributions to a retirement plan,

¹¹ Exhibit 4, p. 17. Total insurance cost is \$95.63 per pay period x 26 pay bi-weekly periods = \$2,486.38/year. \$2,486.38 / 12 months = \$207.20 per month.

¹² The undersigned takes official notice that, as of February 26, 2019, 1 Dominican Peso equals \$.02 U.S. dollars. See https://www.currency-calc.com/USD_DOP. As of 2/26/19, 5000 Dominican Pesos is \$98.75 dollars.

¹³ 15 AAC 05.030(h).

¹⁴ AS 25.27.190(e).

¹⁵ 15 AAC 125.321(d).

¹⁶ See also 15 AAC 125.020, 15 AAC 125.030.

¹⁷ Civil Rule 90.3, Commentary III.E.

¹⁸ Civil Rule 90.3(a)(1)(A). The deduction for mandatory and voluntary retirement contributions is capped at a maximum of 7.5% of the parent's gross wages or self-employment income.

work-related childcare expenses for the children who are the subject of the support order, and a parent's cost of health insurance premiums for covering himself or herself only.¹⁹

Mr. D's 2018 gross wages were \$51,735.43. He also received the PFD. He is eligible for deductions of \$206.70 per month for his retirement contributions and \$207.20 per month for his cost of his own health insurance premiums. His daughter T is an intervening child between H and F. Therefore, Mr. D is eligible for a prior child deduction for his cost of supporting T, but that deduction only applies to the calculation of his support amount for F. As a result, separate calculations are needed to determine Mr. D's support amounts for H and for F.

After the hearing on February 26th, CSSD submitted an exhibit incorporating all the deductions that apply to Mr. D's obligation for H, including his retirement contributions and health insurance costs.²⁰ Since H is Mr. D's oldest child, the support amount is set at 20% of his adjusted annual income, or \$653 per month.²¹

The calculation for F includes the same deductions for retirement contributions and health insurance premiums. It also includes "prior child" deductions for Mr. D's \$653 obligation for H plus \$99 for T, or \$752 in total. When all deductions are included, Mr. D's income results in a monthly support amount of \$176 for F.²² The combined obligations for both children total \$829.²³ This amount is supported by the evidence in the record and should be adopted.

Mr. D disagreed with this calculation for several reasons. First, he argued that the deduction for T should be \$125, since that is the amount he actually sends for her each month. However, the deduction for prior children is limited to the amount required by other court or administrative proceedings. It does not include additional voluntary payments.

He also argued that the calculation must be incorrect, because his prior obligation for three children was only incrementally higher. The 2014 calculation for three children was based on gross wages of \$42,212 plus the PFD.²⁴ It resulted in a three-child monthly obligation of \$953. In 2018, Mr. D earned significantly more than \$42,212. Despite this, the two-child support amount is still \$124 less than his prior obligation. This reflects an appropriate reduction, given the evidence

¹⁹ Civil Rule 90.3(a)(1)(B)-(F). The deduction for the obligor's own health insurance coverage cannot exceed 10% of the parent's gross wages and self-employment income.

²⁰ Exhibit 9, p. 1.

²¹ *Id.*

²² Exhibit 9, p. 2. The support amount for F is the difference between the one-child and the two-child amounts. \$678 - \$502 = \$176.

²³ \$653 + \$176 = \$829.

²⁴ *See In re K D*, OAH No. 14-2055-CSS, Attachments A, B (Comm'r of Revenue, May 8, 2015).

of Mr. D's circumstances. The calculation complies with Civil Rule 90.3, and no error is shown. Mr. D suggested that an \$829 monthly support amount for two children will create a financial hardship. However, he did not want to disclose all sources of household income, including his partner's income, and he did not request a hardship variance.

His final concern was that CSSD has not correctly accounted for his child support payments, because his arrears balance continues to grow despite his payments. Ms. Estes explained that payments generally have not kept up with the ongoing support obligation. She agreed to request a summary of the case history, so Mr. D can review each month's support amount, payments made, and interest charged. To the extent he has continuing questions or concerns on this issue, Mr. D should contact his CSSD caseworker. This administrative appeal is limited to the calculation of his modified child support obligation; the accounting issues he raised are beyond the scope of this appeal.

IV. Conclusion

Mr. D showed that the modified child support order should be adjusted because certain deductions were not factored into the original calculation. When all deductions are included, his income results in a support amount of \$829 per month for H and F. This amount was calculated under Civil Rule 90.3(a) without variation. It is supported by the evidence and should be adopted.

V. Child Support Order

- Mr. D's support obligation for H and F is adjusted to \$829 per month, effective July 1, 2018 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 9, 2018 remain in full force and effect.

DATED: March 1, 2019.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

[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 18th day of March, 2019.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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