

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

In the Matter of)	
)	
B C. M)	OAH No. 18-0640-CSS
<hr style="width: 80%; margin-left: 0;"/>)	Agency No. 001166038

DECISION AND ORDER

I. Introduction

B C. M appeals a decision by the Child Support Services Division (CSSD) increasing his monthly child support obligation for his daughters G and O from \$121 per month to \$1,082 per month. Although Mr. M concedes that the revised support calculations in the May 2018 order are based on his actual income and the parties’ current custody arrangement (whereas the prior calculation was based on shared custody and a much lower annual income), he seeks a hardship variance based on his other monthly expenses. But hardship variances are only available where the obligor parent proves by clear and convincing evidence that enforcing the Civil Rule 90.3 support order would work a manifest injustice. While the modified support order undoubtedly poses a significant financial challenge to Mr. M, the challenge is one of his own making, in that he has chosen to undertake large financial obligations on lifestyle expenses, including but not limited to a new, very expensive truck. A parent’s financial obligation to support his or her children takes primacy over the parent’s lifestyle desires, and the latter does not justify a hardship variance from the standardized support formula set out in Civil Rule 90.3. Because Mr. M has not proven by clear and convincing evidence that manifest injustice will result from enforcement of the support order, his request for a hardship variance is denied.

II. Facts

A. Background

B M and J P are the biological parents of two daughters, G, age 10, and O, age 8, both of whom live with Ms. P in City A. Mr. M lives in City B with two of his other children, ages 7 and 18. Ms. P was awarded primary physical custody of the parties’ children in June 2016.¹

¹ Ex. 4.

Prior to the Order that is the subject of this appeal, however, the parties were operating under a September 2011 Child Support Order that was issued while they still shared custody.² Thus, for several years, Mr. M has paid less monthly child support than he would have had the parties' order been recalculated to reflect their actual custody arrangement. Additionally, when the parties' prior support order was calculated, Mr. M's average annual income was \$41,526.³ Although his income has steadily increased over the past several years,⁴ he has continued to pay support calculated based on his 2011 income.

B. May 2018 Modified Support Order

After receiving a modification request in another support case involving Mr. M, CSSD undertook a review of the order in this case as well.⁵ CSSD notified the parties in February 2018 that it was conducting a modification review.⁶ Based on actual income information provided by Mr. M, CSSD issued a decision on modification review and a modified support order in May 2018.

As noted above, at the time the parties' prior support order was calculated, Mr. M's average annual income was \$41,526.⁷ His income has steadily increased over the past several years, however.⁸ Mr. M provided documentation from his current employer establishing that his annual income is now roughly \$82,000 per year, and his monthly net pay (from which health care costs, retirement, and at least some child support is deducted) is roughly \$4,700.⁹ Additionally, as noted above, when the parties' prior support order was calculated, the calculation was based on shared custody, which ended in July 2016.¹⁰

On May 25, 2018, CSSD issued a Modified Administrative Child Support and Medical Support Order setting Mr. M's monthly support obligation for two children at \$1,082 per month.¹¹ This amount was calculated based on Mr. M's annual income, and with deductions for retirement, as well as for a prior child in the home.¹² (Specifically, the

² Ex. 1.
³ Ex. 1, p. 4.
⁴ Estes Affidavit.
⁵ CSSD hearing presentation.
⁶ Ex. 2.
⁷ Ex. 1, p. 4.
⁸ Estes Affidavit.
⁹ Ex. 3, pp. 3-6; Ex. 6.
¹⁰ Ex. 5.
¹¹ Ex. 6, pp. 1, 6-7.
¹² Ex. 6, p. 8.

calculation provides a \$1,002 per month deduction for a prior child in the home, although, as it turns out, that child turned 18 shortly after the effective date of the modification.¹³⁾

C. Household budget information

In this administrative appeal, Mr. M does not challenge the accuracy of the Division's calculations, or its application of the Civil Rule 90.3 formula for calculating an obligor's child support obligation based on actual income. Rather, he is requesting a hardship variance under Civil Rule 90.3(c)(1). Accordingly, the following information about both parents' income and expenses is provided.

1. Mr. M's household

Mr. M earns approximately \$82,000 per year.¹⁴ His take-home pay is approximately \$4,700 per month.¹⁵ However, his testimony established that his monthly expenses exceed that amount.

Mr. M pays \$900 per month in rent, plus an extra \$100 per month for a "pet fee."¹⁶ His utilities include \$50 for water/sewer and between \$50 and \$70 for propane. Electric service varies from \$203 in summer to \$303 in winter.¹⁷ The cost of heating oil varies from \$255 in summer to \$428 per month in winter.¹⁸

The family has home internet service, which costs \$161 per month. The family also has a cellular account on which Mr. M pays roughly \$550 per month.¹⁹ This includes separate cellular lines for Mr. M, his parents, each of the two children in the home, and a fifth line for the seven-year-old's iPad.

In February 2018, Mr. M purchased a 2018 Dodge Ram truck for \$63,438.00.²⁰ He entered into a 75-month installment contract, with an interest rate of 14.65%, agreeing to monthly car payments of \$1,304 per month.²¹ He also pays \$124 in insurance, and roughly \$270 per month in gas.

¹³ Ex. 6, p. 8; M testimony.

¹⁴ Ex. 6, p. 8.

¹⁵ Ex. 3, pp. 3-6.

¹⁶ Ex. 3.

¹⁷ Ex. 3; Ex. 6, p. 16.

¹⁸ Ex. 3; Ex. 6, p. 16.

¹⁹ Ex. 6, pp. 10-12.

²⁰ Ex. 3, p. 20.

²¹ Ex. 3, p. 20; M testimony.

He estimates that the family spends \$100-\$150 per month on entertainment, \$45 per month on personal care, and \$1,000 per month on groceries.²² He also has slightly over \$4,200 in credit card and personal loans, and pays a total of \$290 per month towards these.²³

The total monthly expenses described by Mr. M are as follows:

\$900	rent
\$100	pet fee
\$728	fuel/electric – winter (or \$458 in summer)
\$50	water/sewer
\$60	propane
\$161	home internet service
\$550	cell phones
\$1,304	car payment
\$270	gas
\$124	car insurance
\$1,000	groceries
\$290	credit cards
\$165	entertainment and personal care
\$5,702	Total²⁴

Even without adding in Mr. M’s various child support obligations, these expenses exceed his monthly take-home pay.

Of note, these expenses are far greater than Mr. M’s monthly living expenses as described in the parties’ 2011 Decision and Order. At the time, Mr. M was living in City A. However, he also had four children in his household, rather than two. His monthly expenses were between \$2,500 and \$2,700. Notably different, and not explainable by the change in locale, are the amounts Mr. M has chosen to spend on a personal vehicle and on cellular and internet services. In 2011, Mr. M was spending \$105 per month on telephone and internet.²⁵ Now, he reports spending \$161 on home internet service, and \$550 for cell phones – an amount that includes multiple lines for the household, including cell phones for both children as well as a dedicated line for a child’s iPad.²⁶ In 2011, Mr. M was spending at most \$937 per month on “his primary vehicle, gasoline, insurance, and maintenance.”²⁷ His vehicle-related spending now includes a \$1,304 truck payment, \$270 in gas, and \$124 in

²² M testimony.

²³ M testimony.

²⁴ Mr. M also pays \$129 per pay period for health insurance. This amount is taken out of his paycheck, and so is not included in his monthly take-home.

²⁵ Ex. 1, p. 3.

²⁶ M testimony.

²⁷ Ex. 1, p. 3.

insurance, for a total of \$1,698 per month.²⁸ In other words, his vehicle expenses exceed his Civil Rule 90.3 child support obligation for G and O by more than \$600 per month.

2. Ms. P's household

Ms. P lives with her three children – G, O, and a five-year-old son – and her son's father. She works part time at the City A courthouse, but does not regularly work enough hours to receive benefits or health insurance. She estimates she works approximately 30 hours per week, earning \$16 per hour.

Her "significant other" works in commercial fishing and diving. His income fluctuates depending on conditions, but can range between \$120,000 and \$160,000 per year. He helps her with expenses for G and O, but also has his own separate expenses.

The family rents a home for \$700 per month, with monthly fuel oil costs of around \$250, monthly electric costs of around \$280, and monthly water/sewer costs of \$50 per month. Ms. P owns a 2012 van, which costs about \$170 per month in gas.

They have cellular service that costs \$245 per month for one phone line and two iPads. They have cable television, but do not have wi-fi because it is so expensive.

The family spends about \$1000 per month on groceries. They travel frequently to City C, so they spend about \$220 per month on ferry tickets, and between \$100-150 per month eating out.

D. Administrative Appeal

CSSD issued its Modified Administrative Child Support and Medical Support Order on May 25, 2018. Mr. M submitted an appeal of that order on June 19, 2018.

The hearing on Mr. M's appeal was held on July 12, 2018. CSSD was represented by Child Support Specialist Brandi Estes. Mr. M and Ms. P participated by phone, and each testified about the facts described above. Following the hearing, the record was held open through July 23, 2018 to allow either party to submit additional documentation regarding household expenses or that would otherwise be relevant to the request for a hardship variance.²⁹ The record closed on July 24, 2018.

²⁸ M testimony.

²⁹ During this time, Mr. M submitted a winter fuel bill on July 17, and an (unsworn) email on July 20 describing the amount of child support being taken out of his paycheck, and stating: "there is no way I can live off of this as my rent is more than this as well as my truck payment," and reiterating his view that "this is definitely a hardship case and needs to be dealt with accordingly." Ms. P did not submit any further documents.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.³⁰ 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.

The presumptive support obligation when one parent has primary custody is based on the applicable percentage of the noncustodial parent's adjusted annual income. For two children, the applicable percentage is 27%.³¹ In other words, Alaska law expects a noncustodial parent of two children to pay 27% of his or her adjusted annual income towards the support of those children.

In determining the obligor parent's "adjusted" annual income, CSSD may deduct "a very limited number of expenses."³² These include mandatory deductions, such as taxes, union dues, and mandatory retirement contributions. Also deducted are court- or administratively-ordered child support payments from prior relationships, and in-kind support for children from prior relationships who live with the parent, as calculated using the Civil Rule 90.3 formula.

Child support determinations calculated under Civil Rule 90.3 from a noncustodial parent's actual income figures are presumed to be correct. That is, Alaska law presumes that in the majority of situations throughout the state in which one parent must pay child support to the other, the Civil Rule 90.3 formula appropriately balances the financial needs of the custodial parent with the financial needs of the child for whom support is owed.

Because support determinations made using the Civil Rule 90.3 formula are presumed correct, a noncustodial parent seeking a reduction in the support obligation calculated under that formula must meet a heavy burden to show 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.³³ This is a high standard, and reductions based on hardship are reserved for cases involving unusual

³⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

³¹ 15 AAC 125.070(a); Civil Rule 90.3(a).

³² Civil Rule 90.3(a)(1); Commentary to Civil Rule 90.3 (Deductions under the rule).

³³ Civil Rule 90.3(c); *see also* 15 AAC 12.075.

circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

Here, the evidence is that Mr. M's support calculation was correctly calculated under Civil Rule 90.3. If anything, the support amount was incorrectly suppressed (i.e. set lower than is appropriate) because the calculations included a large deduction for a minor child in the home, but that child has since emancipated (turned 18), making the deduction inapplicable.

At the same time, there is certainly evidence that the support amount would be very difficult, if not impossible, for Mr. M to meet under his current financial circumstances. This, however, appears largely to be the result of highly questionable financial choices by Mr. M – choices that ignored his legal obligations to support his children.

The legal obligation to support one's children overrides the desire to own a new truck, or for every member of one's household to have a cell phone. The choice to purchase an expensive truck, and therefore incur large monthly payment obligations, is a personal choice. Certainly, a household is generally required to have reliable transportation, particularly in an area such as City B. However, there is a wide array of reliable transportation options available that do not cost \$63,000, and that therefore do not incur monthly payment obligations of the kind Mr. M has chosen to incur.

While monthly household expenses for rent, food, and utilities must be part of the hardship analysis, Mr. M's expenses on those true necessities do not preclude his ability to pay child support. Under these circumstances, Mr. M's personal financial choices cannot serve the basis for a hardship exemption. While it will no doubt be a challenge for Mr. M to right his financial ship, he must do so in a manner that places his legal obligation to support his children above the various extravagant personal choices he has made.

IV. Conclusion and Order

The Civil Rule 90.3 calculation is correct, and Mr. M has not met his burden of proving by clear and convincing evidence that he is entitled to a hardship variance. Accordingly, the May 25, 2018 Modified Administrative Child Support and Medical Support Order is affirmed in all respects.

Dated: August 1, 2018.

Signed _____
Cheryl Mandala
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 14th day of September, 2018.

By: Signed _____
Signature
Sheldon Fisher _____
Name
Commissioner _____
Title

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