

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

In the Matter of:)	
)	OAH No. 19-0165-CSS
D S)	CSSD No. 001196194
_____)	

DECISION AND ORDER

I. Introduction

D S appeals the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 29, 2019. The order increased his child support obligation for his daughter B from \$70.00 to \$509.00 per month, effective November 1, 2018. Mr. S asserts the Division miscalculated his income. He also argues he cannot afford the increased support amount and requests a reduction based on financial hardship.

Mr. S did not show that CSSD incorrectly calculated his monthly child support obligation under Civil Rule 90.3(a), nor did he show clear and convincing evidence that a manifest injustice would ensue if his obligation is not reduced under Civil Rule 90.3(c). CSSD's decision is affirmed

II. Facts

A. Background

D S and M T are the biological parents of B, who turns seven on May 00, 2019. B lives with Ms. T. B is Mr. S' eldest child.

CSSD issued a child support order January 8, 2016, establishing Mr. S support obligation at \$70.00 per month.¹

Ms. T verbally requested a modification of Mr. S' obligation on October 22, 2018 and notice was provided to Mr. S.² On January 29, 2019, CSSD issued a Modified Administrative Child Support and Medical Support Order.³ CSSD recalculated Mr. S' income and modified Mr. S' monthly child support obligation to \$509.00 per month for B.⁴ Mr. S appealed.⁵

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ *Id.*
⁵ Exhibit 4.

On March 13, 2019, a telephonic hearing began. Mr. S testified on his own behalf, as did Ms. T. Brandi Estes, Child Support Specialist for CSSD, presented CSSD's position. Exhibits 1-6 were admitted without objection. Following testimony, the parents were given until March 25, 2019, to provide documentation supporting their positions. Ms. T provided documentation, which was marked and admitted as Exhibit A. Mr. S did not provide any documentation. CSSD had an opportunity to respond but provided nothing additional. The record closed March 29, 2019.

B. Material Facts

Mr. S currently lives with his wife in Pennsylvania. They share a two-and-a-half-year-old son, with another child on the way. Mr. S' wife is not employed and stays at home caring for their child.

Mr. S' 2018 gross earnings were \$41,910.00.⁶ He primarily earned this income working for Business A until the Fall 2018. Despite efforts to glean specifics regarding his employment and income, Mr. S was vague in his description of his employment. He did not state why his prior employment ended and provided no information that would demonstrate he is incapable of working full time.

Following a period of unemployment, Mr. S began work at Business B as a non-union welder on December 11, 2018. Mr. S currently works between 20 to 40 hours a week and earns \$18.36 per hour. He is currently training to be part of the union. Mr. S could not explain why he is not working full time, other than he is currently in a probationary status at work. He could not explain how his work schedule was determined or whether there was any regularity in his schedule. He gave no indication when his probationary period would end but said he will be working 40 hours per week once probation is completed. He did not know when that would be.

Mr. S and his wife rent a home for \$700.00 per month, although the family is behind on rent. Food costs are approximately \$500.00 per month, with an additional \$200.00 a month for eating out.⁷ Mr. S estimated the cost of gas for the home at \$300.00 per month. Mr. S' water costs is \$45.00 per month and trash collection is between \$36.00-40.00 per month. The family's internet and cable costs are \$115.00 per month. The family's electricity costs were estimated at \$298.18 per month and water / sewer is \$50.00 per month. The family has two cell phones,

⁶ Exhibit 5.

⁷ Mr. S estimated his household costs.

which cost \$100.00 per month. Mr. S has a 2002 Subaru, on which he owes no money. His wife drives a 2004 Hyundai Santa Fe, on which the family owes \$1,200.00. He purchased the vehicle from his father, so he pays as he can. The cost of gas for the vehicles is approximately \$80.00 per month. Mr. S spends approximately \$80.00 per month for cigarettes. He also has a Harley which costs \$289 per month, plus an additional \$120.00 for insurance. He also pays \$100.00 for diapers and wipes for his child. Mr. S owes \$4,000.00 for treatment and legal costs from a 2012 DUI. He pays \$50.00 per month towards that. His regular monthly expenses, including the monthly obligation of \$509.00 for B, is approximately \$3,578.00.

Ms. T is a single mother caring for three children: B, a sibling of B's, and a relative foster child who she recently agreed to provide care. Ms. T's take home pay is \$33,059.76. She pays \$775.00 per month in rent. She pays \$75.00 weekly in water. The family's food bill is approximately \$700 per month, including eating out. Her cell phone is \$45.00 per month. Ms. T's car payment is \$555.00 per month, plus \$275.00 per month in gas. Her health insurance, and life insurance is \$178.00 per month. She received one emergency payment for foster care of \$405.00, however, she is not a licensed foster parent so does not expect this as a regular income. Her monthly bills are \$2,823.00.⁸

III. Discussion

A. Burden of Proof

As the person who filed the appeal, Mr. S bears the burden of proof. Mr. S must show by a preponderance of the evidence that CSSD incorrectly calculated his income under the Civil Rule 90.3(a) primary custody formula.⁹ Further, to justify a hardship variance under Civil Rule 90.3(c), Mr. S must provide clear and convincing evidence of unusual circumstances and manifest injustice.¹⁰

B. CSSD correctly calculated Mr. S' support amount under the primary custody formula

A parent is obligated both by statute and common law to support his or her child.¹¹ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. The Commentary to Civil Rule 90.3 explains

⁸ Exhibit A; T testimony.

⁹ 15 AAC 05.030(h).

¹⁰ Civil Rule 90.3.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

the rule is designed to approximate the amount a non-custodial parent would spend on the child if the family was intact. It operates on the principal that, as the income available to both parents increases, the amount available to support the child also will increase.¹²

A child support order may be modified upon a showing of “good cause and material change in circumstances.”¹³ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a “material change in circumstances” has been established and the order may be modified. As Mr. S’ prior obligation was \$70.00 per month, a revised child support calculation that is at least \$80.50 warrants modification.¹⁴

C. *CSSD properly calculated Mr. S modified obligation*

Under Civil Rule 90.3, a parent’s child support obligation is calculated as a certain percentage of the income which will be earned when the support is to be paid.¹⁵ B is Mr. S’ oldest child. Under Alaska law, B is entitled to receive 20% of his adjusted gross income without any reduction for Mr. S’ younger children from different relationships.¹⁶

Calculating income can be somewhat speculative because the relevant income figure includes expected future income.¹⁷ Here, CSSD based its calculations for modified child support amount on Mr. S’ current hourly income, as reported by his employer, because Mr. S did not provide income information.¹⁸ Mr. S’ rate of pay was identified as \$18.00 per hour. Over a full-time work schedule, this wage results in gross annual income of \$37,440. Though Mr. S argued that CSSD overestimated his income, his actual 2018 wages totaled more than \$41,000.¹⁹ He argued that his expected 2019 income is likely to be less than CSSD estimated, since his current work schedule is variable. However, his current hourly wage, at \$18.36, is slightly higher than CSSD’s estimate. And, he offered only vague testimony about his actual work hours, the reasons for the changing schedule, and the expected end of his probationary status with his employer. This did not meet his burden.

¹² Civil Rule 90.3, Commentary, II.

¹³ AS 25.27.190(e). CSSD also has the discretion in this statute to modify when three years have passed since the last order.

¹⁴ $70 \times 15\% = 10.50$; 10.50 plus \$70.00 is \$80.50, which is a 15% increase.

¹⁵ Civil Rule 90.3, Commentary, Section III(E).

¹⁶ Alaska Civil Rule 90.3 Commentary VI.B(2).

¹⁷ Civil Rule 90.3, Commentary, Section III(E).

¹⁸ Exhibit 3 pp. 7-8.

¹⁹ Exhibit 5.

As his recent employment history shows, Mr. S can work full time and earn at least \$37,440 per year. And while his current employment is not consistently yielding 40 hours per week of work, this reflects a temporary situation. Mr. S anticipates steady, full-time employment once he is off his probationary period. Mr. S provided no evidence of any projected reduction or end to this employment, and in fact seemed confident that this will result in steady full-time employment.

It is reasonable to conclude he could be or soon will be working full time, particularly once his probationary status ends. Alternately, if his work schedule remains at a part-time level for an extended period of time, he reasonably can be expected to supplement his income with other work. Mr. S is ending a period of transition to his new position, but he did not show that CSSD erred in determining his expected income.

After applicable deductions, including a deduction for Pennsylvania state taxes, Mr. S' income results in an adjusted annual income of \$30,564.12 and a support amount of \$509 per month under the primary custody formula²⁰

E. Hardship variance under Civil Rule 90.3(c).

Mr. S requests a reduction of his support amount for B based on financial hardship. 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. 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."²¹

Good cause also may include a finding that "unusual circumstances" exist, which justify variation of the calculated child support amount, because the circumstances make the application of the usual child support formula unjust.²² In this, it is appropriate to consider all relevant evidence, including the custodial parent's income.²³

Mr. S argues that he is in financial hardship because he supports his wife, young son, and has another child on the way. Under Alaska law, Mr. S' duty to pay the correct percentage of his income toward his ongoing support for B takes precedence over other debts and financial

²⁰ Exhibit 3 p. 8.

²¹ Civil Rule 90.3(c).

²² Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B.

²³ Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B.

obligations.²⁴ In general, new obligations to subsequent children do not diminish that duty.²⁵ Therefore, Mr. S' obligation to support his younger children will not justify lowering his monthly support for B unless a reduction is required to prevent a substantial hardship to the younger children.²⁶

At full-time employment and his currently hourly wage, Mr. S' monthly income is approximately \$3,120.00.²⁷ Including his obligation for B, his monthly expenses total \$3,578.00.²⁸ His monthly expenses exceed his monthly income. However, his expenses include some significant discretionary spending. He also has options to close the budgetary shortfall with additional income, such as from a part-time job if he is not getting full time hours with his current employer. Additionally, his wife could contribute to help support their household. Though Mr. S clearly faces budgetary stresses, he did not meet his high burden to show clear and convincing evidence of manifest injustice or substantial hardship to his subsequent children if his support amount for B is not reduced.

Like Mr. S, Ms. T's resources also appear to be limited. As a result, B is not able to subsidize Mr. S' subsequent family by foregoing the support calculated under the regular formula. Therefore, Mr. S did not meet his high burden on this issue.²⁹

IV. Conclusion

Mr. S did not show any error in the Modified Administrative Child Support and Medical Support Order dated January 29, 2019. Under the Civil Rule 90.3(a) formula, Mr. S' income results in a support amount of \$509.00 per month for B. Mr. S failed to show clear and convincing evidence warranting a hardship variance. Accordingly, his request for a variance under Civil Rule 90.3(c) is denied.

²⁴ *Kestner v. Clark*, 182 P.3d 1117, 1123 (Alaska 2008) (A parent should not be relieved of the obligation to support his or her children except under the most extreme circumstances).

²⁵ *Id.*; Civil Rule 90.3(c) Commentary VI.B.2.

²⁶ Alaska Civil Rule 90.3 Commentary VI.B.2; 15 AAC 125.075(a)(2)(F).

²⁷ This estimation is based on full time employment at \$18.36 per hour.

²⁸ In calculating a parent's adjusted annual income, deductions are made for supporting a child of a prior relationship. Alaska Rule Civil Procedure 90.3(a)(1)(C). There is, however, no corresponding deduction allowed for children of a subsequent relationship. Alaska Rule Civil Procedure 90.3 Commentary III.D and IV.B.2.

²⁹ *See* Civil Rule 90.3(c)(1), 15 AAC 125.075.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated January 29, 2019 is affirmed and remains in full force and effect.

DATED this April 18, 2019.

Signed

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

DATED this 3rd day of May, 2019.

By: Signed

Signature
Hanna Sebold

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.]