

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

In the Matter of)
)
X K-T) OAH No. 20-0927-CSS
) Agency No. 001229956
_____)

CORRECTED¹ DECISION AND ORDER

I. Introduction

X K-T appeals a Modified Administrative Child and Medical Support Order that the Child Support Services Division (CSSD/Division) issued on November 2, 2020. The modification increased his monthly child support obligation for his daughter M from \$720 to \$1008 per month, effective July 1, 2020. Mr. K-T requested a reduction based on financial hardship and asserted that the Division had miscalculated his adjusted annual income by failing to deduct his current retirement contributions.

Mr. K-T showed by a preponderance of the evidence that the Division’s calculation did not include an appropriate retirement contribution deduction. However, he did not show clear and convincing evidence of manifest injustice if his support obligation is not reduced, however. His request for a modification in the form of a hardship variance is denied.

Additionally, during the hearing Mr. K-T acknowledged paternity of an additional dependent child, L. Therefore, his monthly child support obligation is modified to \$1547 to reflect the addition of the second daughter, effective July 1, 2020. His arrears balance for L is established at \$253 for the month of December 2019 and \$406 per month for January 2020 through June 2020.

II. Factual and Procedural Background

A. Material Facts

Mr. K-T and Ms. N H are the parents of M, who is four years old, and L, who will be two years old in 2021. Ms. H resides in City A and is the custodian parent of the children. Mr. K-T resides in the City B .

Mr. K-T is an operator at the Employer A. His gross annual income is \$113,820.73. After applicable deductions that include social security, Federal taxes, retirement

¹ After the proposed decision issued Mr. K-T notified the parties that he was not living in City A, but rather the City B. This was corrected.

contributions and support paid for an older child from a prior relationship, his adjusted annual income is \$68,760.85. He lives alone, and on a monthly basis pays \$1500 for his mortgage, \$800 for food, and an average of \$1,341 for utilities, including internet, cable and a phone plan. His monthly truck payment is \$632, while monthly gas and vehicle maintenance bills total \$400. He spends on average \$200 a month on alcohol and tobacco. Based on his current income and his listed expenses, his monthly budget reflects a surplus of about \$300.²

Ms. H recently accepted a job at the local women's shelter earning \$25 an hour.³ She lives with her two daughters and her monthly rent is \$1,300. She spends an average of \$924 a month on food. She qualifies for Women, Infants and Children (WIC), which is a federal supplemental nutrition program for low-income families. Her household expenses, including a phone plan, total \$596.60. Her monthly snow machine payment is \$162.41, while gas, maintenance and insurance total \$476.60. She spends an average of \$607 per month on entertainment, clothing, school supplies, and \$59 on alcohol and tobacco. Her childcare expenses can run as high as \$800 a month depending on the availability and cost of a babysitter.

Ms. H has average monthly expenses in excess of \$4640, and a monthly income of \$2800. She sells hand crocheted hats and headbands to augment her income, but every month she runs a deficit and often must take out a payroll loan to cover the household bills.

B. Support obligation calculation

On April 2, 2019, the Division issued an Administrative Child Support and Medical Support Order setting Mr. K-T's monthly support obligation for M at \$720.⁴ Ms. H requested a modification review, and the Division solicited income information from both parties. Mr. K-T did not supply any income information, so the Division set his support amount using his employer's reported wages from the last four consecutive fiscal quarters, his NANA shareholder dividends, and the Permanent Fund Dividend (PFD).⁵ After authorized deductions for taxes, social security payments, unemployment insurance, and

² Both parties also are making monthly payments on outstanding consumer debt. However, this is typically not considered when calculating the household expenses of either party, and is similarly excluded here.

³ At the time of the hearing she had not yet started her new job. She was previously an administrative assistant earning \$20 per hour.

⁴ Ex. 1.

⁵ Ex. 3.

support for a child from a prior relationship in the amount of \$1,260 per month, his adjusted annual income totaled \$60,485.09. Using the primary custody formula in Civil Rule 90.3, the Division set Mr. K-T support obligation for M at \$1,008 per month, effective July 1, 2020.⁶

As the paternity determination for L was still pending, she was not included in the monthly support obligation calculation, nor were pre-hearing arrears established.

C. Appeal and hearing

On November 22, 2020 Mr. K-T requested an administrative hearing, stating that the calculation did not include an appropriate deduction for his retirement contributions and that he was experiencing financial hardship.⁷ A formal hearing was held in this matter on December 16, 2020, then reconvened on January 27, February 3, and February 8, 2021. Mr. K-T and Ms. H both appeared telephonically and represented themselves. The Division was represented by child support specialist Brandi Estes.

III. Discussion

A. Child support modification under Civil Rule 90.3(a)

In a child support matter, the person who files the appeal has the burden of proving that Division's order is incorrect.⁸ Mr. K-T filed this appeal, so he must prove by a preponderance of the evidence that the Decision issued on November 2, 2020 regarding the Modified Administrative Child Support and Medical Support Order is incorrect.

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her total income from all sources minus mandatory deductions such as older children from prior relationships, Federal income taxes, and Social Security/Medicare withholdings.¹⁰ Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ A material change in

⁶ Civil Rule 90.3(a)(2)(A) specifies that a non-custodial parent's adjusted income is to be multiplied by 20% to determine appropriate child support for one child. Therefore, \$60,485.09 x 20% = \$12,097.02 per year or \$1,008 per month.

⁷ Ex. 4.

⁸ 15 AAC 05.030(h).

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁰ Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

¹¹ AS 25.27.190(e).

circumstances is established when a new child is added to an existing order, as occurred in this case.

D. Recalculation of Mr. K-T's obligation under Civil Rule 90.3

During the hearing Mr. K-T acknowledged paternity of L, the second daughter he shares with custodial parent Ms. H. Therefore, the Division recalculated Mr. K-T obligation, basing his income on employer reported wages and the PFD, which totaled \$113,820.73.¹² He sum of his monthly deductions for Federal income tax, Social Security and unemployment insurance came to \$2,272.80.¹³ His retirement contributions were included as 7.5% of his gross wages, or \$705 per month, the maximum deduction allowed under Civil Rule 90.3.¹⁴ Mr. K-T was also given a deduction of \$777, the monthly support obligation that he pays for an older child from a previous relationship.¹⁵ The result was an adjusted annual income of \$68,760.85, and a monthly support obligation of \$1,547 per month for two children.¹⁶

Under Civil Rule 90.3(a)(2) an obligation for one child should represent 20% of an obligor's total income from all sources, while the calculation for two children increases to 27%. Therefore, the pre-order arrears the Mr. K-T owes for L for the months of January 2020 through June 2020 is \$401, the difference between \$1,547, his obligation for two children calculated at 27% of his 2020 adjusted annual income, and \$1,146, which represents 20%.¹⁷ For the month of December 2019, the date when an application for support services for L was received by the Division, his obligation for L is \$253, the difference between 20% and 27% of his 2019 adjusted annual income.¹⁸

F. 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

¹² Ex. 12.
¹³ *Id.*
¹⁴ *Id.*
¹⁵ *Id.*
¹⁶ *Id.*
¹⁷ *Id.*
¹⁸ Ex. 11.

“manifest injustice would result if the support award were not varied.”¹⁹ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee children, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).²⁰

The upward modification of the child support obligation will undoubtedly create stress for Mr. K-T whose household budget is constrained. However, he lives alone and has a steady income as an operator at the Employer A. His hours have increased during the Covid-19 pandemic as workers are required to spend longer stretches of time at Employer A before rotating into a week off.²¹ His income is adequate to cover his monthly household bills.

Ms. H lives in a home with two dependents, a single income, and every month falls far short of being able to meet her monthly household expenses. Her financial situation is considerably more difficult than Mr. K-T's, and reducing his monthly support obligation would be detrimental to the maintenance of their children, M and L. Based on the evidence in its entirety, there is no clear and convincing evidence that manifest injustice would result if Mr. K-T's support obligation were not varied from \$1,547 per month for two children, the correct amount calculated under Civil Rule 90.3.

IV. Conclusion

As Mr. K-T did not show by clear and convincing evidence that his support obligation as calculated under Civil Rule 90.3(a) would result in manifest injustice his request for a variance is denied. However, he did meet his obligation of showing by a preponderance of the evidence that the November 2020 Modified Administrative Child Support and Medical Support Order was incorrectly calculated under Civil Rule 90.3 as it did not appropriately credit Mr. K-T for his retirement contributions. The updated calculation set forth above appropriately includes a retirement deduction. Additionally, as Mr. K-T acknowledged paternity L, the calculation includes an ongoing support obligation for her under the primary custody formula and establishes pre-order arrears, as well.

¹⁹ Civil Rule 90.3(c).

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

²¹ Mr. K-T testified that the longer hours may end at some point, as Employer A shifts back to pre-Covid schedules. If this happens, he or Ms. H may request another modification review.

V. Child Support Order

1. X K-T is liable for child support in the amount of \$1547 per month for two children effective July 1, 2020 and ongoing.
2. X K-T is liable for pre-order arrears for L in the amount of \$253 for the month of December 2019, then \$401 per month for January 2020 through June 2020.
3. All other terms of the Modified Administrative Child Support and Medical Support Order dated November 2, 2020 remain in full force and effect.

Dated: February 19, 2021 (reissued on March 4, 2021)

Signed

Danika B. Swanson
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 22nd day of March, 2021.

By: Signed

Signature
Mike Barnhill

Name
Deputy Commissioner

Title

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