

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

IN THE MATTER OF)
)
 J. A.) Case No. OAH-07-0528-CSS
) CSSD Case No. 001097742
_____)

DECISION & ORDER

I. Introduction

The obligor, J. A., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on July 31, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on September 11, 2007. Mr. A. appeared by telephone. The custodian, K. I., did not appear. David Peltier represented CSSD by telephone. The child is D. I. (DOB 00/00/98). The administrative law judge issues a support order setting arrears at \$50 per month and ongoing support at \$100 per month.

II. Facts

CSSD established the administrative support order in this case as the result of public assistance that the child began receiving in 1991. CSSD did not establish the order until June of 2007 because it did not have correct information about the father's identity until this year. Mr. A. was unaware that D. was his child until February, 2007.

Mr. A. lives in No Name City with his significant other in a low-income housing complex they have shared since 1996. They have two children living with them, one born on 00/00/90, and one born on 00/00/96.

Mr. A. is 41 and has a high school diploma. He testified that he mostly works seasonal and part-time labor and construction jobs, and usually is without employment in the winter time. Mr. A.'s significant other works as a part-time bilingual program secretary and part-time instructional aide during the school year, earning about \$1,100 every two weeks. In the amended order, CSSD calculated arrears of \$16,523 for the period from February, 2001, through July, 2007, based on monthly support of \$262 from the beginning of the period until January 1, 2004, and \$171 per month from then on, based on gross income of \$15,457.84 in 2004. CSSD stated that while Mr. A.'s income has fluctuated since 2004, it has never changed so much that the resulting support obligation would be more than fifteen percent higher or lower than \$171 per month.

Mr. A. testified that food, fuel, and other expenses are unusually high in No Name City, and he provided an expense checklist supporting the assertion.¹ It should be noted that since D. and the custodian also appear to live in No Name City, they would be subject to the same high costs of living. There is no income information available for the custodian, except that she receives public assistance on D.'s behalf and has been doing so since 2001, except during a six-month period in 2002 and 2003.

III. Discussion

Child support in a primary custody case is calculated, according to Civil Rule 90.3(a), at twenty percent of the obligor's income, after deductions are made for certain payments such as for taxes and support of older children. There is no dispute that CSSD has correctly calculated support according to the rule and Mr. A.'s actual income.

Mr. A. made it clear that he does not wish to evade paying support for D. Although Mr. A. does not dispute that CSSD has correctly calculated his support obligation according to his actual income figures, he argues that under the circumstances the arrears burden in this case is unfair and more than he can reasonably be expected to pay. Mr. A. stated that if he had known of his support obligation when it began to accrue back in 2001, he could have been paying it each month and adjusting his other expenses accordingly. Now, he states, paying off more than \$16,000 in arrears, plus ongoing support and the support of his older children is simply more than he can afford, particularly in the winter months when he is usually unable to find employment. Mr. A. stated in his written appeal that he could help by providing D. with traditional subsistence foods.

According the Civil Rule 90.3 Commentary,

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-2 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child.

Mr. A. was not aware of his support obligation in this case until very recently. Although his other children are older, Mr. A. obviously has apportioned his resources up to this point, in good faith, as if he had only two children to support. The narrow budgetary margin between the very

¹ Exhibit 11.
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high cost of living and the limited employment opportunities in No Name City tends to greatly magnify the impacts of any unexpected expenses, including six years of unanticipated child support arrears. It should also be noted that, while it does not limit a parent's obligation to the state to reimburse public assistance, the fact is that neither D. nor the custodian are likely to be affected by the outcome of this case, as it has been established to reimburse public assistance. The outcome will have a very real and direct effect on Mr. A.'s two older children.

After the hearing, CSSD has taken the position that

clearly Mr. A. will experience a hardship paying off over \$16,000 in arrears along with his monthly support obligation. CSSD does not oppose a reduction to \$100.00 per month for each month arrears are owed and does not oppose setting ongoing support at \$100.00 per month. Without this reduction, Mr. A. and his family may suffer manifest injustice and extreme hardship in trying to meet all of their monthly living expenses.

CSSD is correct that the unusually high family expenses, costs of living in No Name City, limited employment opportunities, and the need to pay relatively significant arrears of some amount together constitute clear and convincing evidence that manifest injustice would result to Mr. A.'s older two children if the ongoing support amount were not varied from the Civil Rule 90.3(a) formula. CSSD's suggestion that Mr. A.'s ongoing support obligation should be reduced from \$171 per month to \$100 per month is reasonable and fair under the circumstances.

The very lengthy period of time during which arrears were accruing in this case without Mr. A.'s knowledge calls for a lesser monthly amount for arrears. Under all the circumstances of this case, a fair amount for monthly arrears would be \$50 per month for all periods of arrears.

IV. Conclusion

Clear and convincing evidence shows that manifest injustice would result if the amount of support in this case were not varied from the Civil Rule 90.3(a) formula. A fair and proper amount of support in this case is \$100 per month for one child for ongoing support. Arrears should be set at \$50 per month.

V. Order

IT IS HEREBY ORDERED that upon adoption of this decision as a final administrative order, Mr. A.'s support obligation for one child be set at the following monthly amounts:

For the period from February 1, 2001, through December 31, 2007, arrears shall be set at \$50.00 per month.

Ongoing support shall be set at \$100.00 per month, effective January 1, 2008.

DATED this 14th day of December, 2007.

By: Signed
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 2nd day of January, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]