

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

IN THE MATTER OF: )

F. S. L. )

OAH No. 07-0601-CSS

CSSD No. 001125166

**DECISION AND ORDER**

**I. Introduction**

On July 17, 2007, the Obligor, F. S. L., requested a modification review of an Amended Administrative Child Support and Medical Support Order. This order requires the Obligor pay child support in the amount of \$780 per month. The Child Support Services Division (CSSD) issued a Notice of Petition for Modification of Administrative Support Order on July 19, 2007, requesting current income information from the Obligor. The Obligor did not provide the requested information and CSSD denied his request for modification review. Mr. L. appealed the denial arguing that the child support amount should be varied due to economic hardship and he supplied the previously requested income information.

A formal hearing was held on November 14, 2007. Mr. L. represented himself and participated in person. Child Support Specialist, David Peltier, represented CSSD. The custodian did not participate.<sup>1</sup> The record remained open until December 22, 2007, to provide CSSD an opportunity to calculate child support based on the new income information provided by Mr. L. and to provide Mr. L. an opportunity to comment on the new calculation. The new calculation resulted in a 3% increase and as such, CSSD, argued that the calculation did not meet the criteria for a change in circumstances sufficient to warrant modification. The record closed without further comment from Mr. L. The Obligee children are X. L., Y. L. and Z. L., all born on 00/00/90.

The facts of this matter do not support modification of the Amended Administrative Child Support and Medical Support Order; Mr. L.'s child support remains \$780 per month.

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<sup>1</sup> The phone number for the custodian contained in the OAH file was called at the time of hearing. However, the custodian was not at the number called.

## II. Facts

Mr. L. requested a variance of his child support obligation due to financial hardship. Using the income information provided by Mr. L.,<sup>2</sup> CSSD determined Mr. L.'s Adjusted Gross Income for purposes of calculating child support to be \$29,253.40 or \$2,437.78 per month.<sup>3</sup> Using this figure, CSSD calculated Mr. L.'s monthly child support obligation to be \$804 per month. Mr. L. testified that he is having difficulty supporting his subsequent family. He is not current on several bills including medical bills. He lives with his wife, her son and daughter from a prior relationship, and their three children in a double wide trailer where they rent the trailer space for \$390 per month. Mr. L. testified that the trailer is in disrepair with some rooms lacking electricity. He estimates his food and utility expenses are \$1,025 per month. He pays \$520 per month for a car loan and gas and \$140 per month for other miscellaneous expenses. Mr. L. has outstanding credit card debt and money judgments against him. He testified that two of his children have asthma and would benefit from replacing the carpet in the trailer. Mr. L.'s wife works 25 – 30 hours per week at Alaska Airlines earning \$16 per hour. She does not receive child support for her prior children.

## III. Discussion

A parent is obligated both by statute and common law to support his or her children.<sup>4</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support payment is to be calculated based on his or her "total income from all sources." A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>5</sup> Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>6</sup> If the newly calculated child support payment is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "good cause and material change in circumstances" has occurred and authorizes modification of the child support order. Here, the newly calculated child support is less than a 15% change from the previous order and hence does not support modification. However, this does not end the inquiry.

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<sup>2</sup> Exhibit 5.

<sup>3</sup> Exhibit 7; *See also* Post Hearing Brief (December 5, 2007) for explanation of CSSD calculation.

<sup>4</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>5</sup> 15 AAC 125.321(d).

<sup>6</sup> AS 25.27.190(e).

Child support determinations calculated under Civil Rule 90.3 from an Obligor's actual income are presumed to be correct. An Obligor parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish "good cause," the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>7</sup> If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .<sup>8</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. The Obligor did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied.

Mr. L. has testified to a financial situation where his monthly expenses are at least \$2,075 per month excluding child support, and his adjusted annual income is \$2,437.78 per month. His monthly income exceeds his monthly expenses. The Obligor's expenses are not greater than his net income. Moreover, these figures do not reflect the contribution to the household income by Mr. L.'s wife.<sup>9</sup>

The crux of Mr. L.'s appeal is that he is having difficulty providing for those children living with him, all of whom were born after X., Y. and Z. The existence of a "subsequent" child or children in the obligor's home born *after* the support obligation arose does not usually provide good cause to vary the child support guidelines.<sup>10</sup> However, the Obligor can establish good cause to vary the child support if he or she can prove, by clear and convincing evidence, that failure to vary the child support award would cause substantial hardship to the subsequent

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<sup>7</sup> Civil Rule 90.3(c).

<sup>8</sup> Civil Rule 90.3(c)(1)(A).

<sup>9</sup> "In considering whether substantial hardship to subsequent children exists, . . . the court should consider the income, including the potential income, of both parents of the "subsequent" children." Civil Rule 90.3 Commentary, § VI.B.2.

<sup>10</sup> Civil Rule 90.3 Commentary, § VI.B.2.

children. Mr. L.'s testimony that two of his children suffer from asthma and would benefit from repairs and remodeling to their home does not meet his evidentiary burden.

Being required to pay child support for X., Y. and Z. may result in difficult budgeting adjustments for Mr. L. He may even have to find another job. Mr. L.'s duty to support X., Y. and Z. takes priority over other debts, obligations, and subsequent children.<sup>11</sup> X, Y. and Z. are entitled to receive child support in an amount commensurate with Mr. L.'s ability to pay, calculated pursuant to Civil Rule 90.3. Thus, in the absence of clear and convincing evidence of manifest injustice, it cannot be concluded that good cause exists to vary Mr. L.'s child support amount calculated under Civil Rule 90.3. Accordingly, Mr. L.'s child support obligation remains unchanged.

#### **IV. Conclusion**

Mr. L. has not met his burden of proving by a preponderance of the evidence that there is good cause and a material change in circumstances that support a modification of his monthly child support payment. Mr. L.'s appeal should be DENIED.

#### **V. Order**

- CSSD's September 6, 2007 Notice of Denial of Modification Review is AFFIRMED.
- Mr. L.'s child support remains at \$780 per month.

DATED this 9th day of January, 2008.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>11</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**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 28th day of January, 2008.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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