

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

IN THE MATTER OF:)

S. H. S.)

) OAH No. 07-0609-CSS

) CSSD No. 001064057

DECISION AND ORDER

I. Introduction

This case involves the Obligor S. H. S.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 25, 2007. The Obligee children are X., DOB 00/00/91; Y., DOB 00/00/95; and Z., 00/00/97.

The formal hearing was held on October 29, 2007. Mr. S. appeared in person; the Custodian, K. C., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 29, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, Mr. S.'s request for a hardship variance pursuant to Civil Rule 90.3(c) is granted and his modified ongoing child support obligation for three children is set at \$300 per month, effective July 1, 2007.

II. Facts

A. History

Mr. S.'s child support obligation for X. and Y. was previously set at \$428 per month.¹ CSSD initiated a modification review so as to add a third child, Z., to the order. On June 14, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. S. provided his 2006 income tax return.³ On September 25, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.'s ongoing child support at \$523 per month for three children, effective July 1, 2007, and also charged him an additional \$855 in arrears for Z. from October 2006, the month CSSD received a request from

¹ Pre-Hearing Brief at pg. 1.

² Exh. 1.

³ Exh. 2.

another state to establish Mr. S.'s paternity of the child and his support obligation for her.⁴ Mr. S. filed an appeal on October 4, 2007, stating he has three children in the home and all his bills are falling behind.⁵

B. Material Facts

The Obligor, S. H. S., is employed at Alaska Industrial Hardware, where he earns \$11 per hour.⁶ In 2006, his earnings were \$21,396, plus the PFD.⁷

Mr. S. lives with N.Y. S. and together they have three children aged five years and younger. In addition, Ms. S.'s teenaged son from a prior relationship lives with them in the home. Ms. S. is fully disabled and unable to work outside the home, so she receives disability benefits in the amount of \$977 per month. Mr. S. is not able to take a second job because he has to take care of the children when he is home.

Mr. S.'s monthly expenses total approximately \$3867 per month, which includes \$600 for space rent; \$415 for mortgage; \$800 for food; \$200 for food away from home; \$132 for natural gas; \$150 for electricity; \$50 for phone; \$60 for cable; \$80 for cell phone; \$450 for the payment on a Toyota Tundra; \$375 for gasoline for two cars; \$180 for vehicle insurance; \$100 for entertainment; \$75 for personal care items and \$200 for children's clothing and diapers.⁸

Nothing is known of Ms. C.'s circumstances or those of X., Y., and Z.

III. Discussion

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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹⁰ Civil Rule 90.3 presumes that if the newly calculated child support amount is more than 15% higher or lower than the previous order, the requirement for "good cause and material change of circumstances" has been met and the support amount may be modified. However, Civil Rule 90.3(h) does not require that the child support amount be modified if that 15% threshold change is not reached.

⁴ Exh. 3.

⁵ Exh. 6.

⁶ Except where indicated, the facts are taken from Mr. S.'s hearing testimony.

⁷ Exh. 2.

⁸ Exh. 8.

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

¹⁰ AS 25.27.190(e).

CSSD correctly calculated Mr. S.'s modified child support obligation for three children at \$523 per month, based on his actual income in 2006. It is from this figure that his request to reduce that amount is considered. CSSD does not oppose "some variance" in Mr. S.'s modified child support obligation.

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. In order 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."¹¹ If there are "unusual circumstances" in a particular case, this may be sufficient to establish "good cause" for a variation 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^[12]

It is appropriate to consider all relevant evidence, including the Custodian's circumstances, to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹³

Even with the amount of money that Ms. S. contributes from her disability benefits, there is not enough income in Mr. S.'s household to pay all of his bills and his child support obligation as calculated. Mr. S. has two large bills – housing and his car payment – that would be difficult to reduce, unless he traded in his Tundra for something less costly. His food expense could possibly be reduced somewhat, especially the amount he spends for food away from home. Also, his total gasoline cost seems a bit high unless he often drives out of the Anchorage area, but most of the other expenses Mr. S. listed appear to be reasonable. This places him in a very stressful situation financially.

Civil Rule 90.3 specifically states that in general, an obligor parent's child support obligation should not be reduced for that parent's younger children.¹⁴ This is because a parent

¹¹ Civil Rule 90.3(c).

¹² Civil Rule 90.3(c)(1).

¹³ See Civil Rule 90.3, Commentary VI.E.1.

¹⁴ Civil Rule 90.3, Commentary VI.B.2.

has the choice not to start a second family if he or she cannot support the children from his or her first family. However, the commentary to the rule also states that:

the circumstances of a particular case involving subsequent children might constitute unusual circumstances justifying variation of support. The court should reduce child support if the failure to do so would cause substantial hardship to the "subsequent" children.^[15]

Based on the evidence in its entirety, Mr. S. has proved by clear and convincing evidence that manifest injustice would result if his child support were not varied from the modified amount of \$523 per month. As a result, Mr. S.'s ongoing modified child support obligation should be set in the amount of \$300, a reduction of \$223 per month from the amount CSSD calculated. Even with this reduction, Mr. S. most likely will be unable to pay all of his bills and his child support, so he will have to make some changes in his financial situation.

IV. Conclusion

Mr. S. met his burden of proving that manifest injustice would result if his child support were not varied pursuant to Civil Rule 90.3(c). A child support amount of \$300 per month is reasonable, and should be adopted, effective July 1, 2007.

V. Child Support Order

- Mr. S. is liable for modified ongoing child support in the amount of \$300 per month, effective July 1, 2007, and ongoing;¹⁶
- Mr. S. remains liable for \$855 in arrears for A. prior to July 1, 2007;
- All other provisions of the September 25, 2007, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 19th day of November, 2007.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁵ *Id.*

¹⁶ In the event this order is still in effect when Mr. S.'s children emancipate, the amount for two children should be \$250 per month, and the amount for one child should be \$200 per month.

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 7th day of December, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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