

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

In the Matter of:)	
)	
G E. L)	OAH No. 07-0614-CSS
_____)	CSSD No. 001146091

DECISION AND ORDER

I. Introduction

G E. L is the father and obligor of record for his child, C L (DOB 00/00/05). At the times pertinent to this case, the custodian of the child was F V-M, the grandmother of C.¹

The Child Support Services Division (“CSSD”) sought to establish an Administrative Child Support and Medical Support Order because public assistance cash grants were paid for the benefit of C beginning in January 2007, and because the (temporary) custodian, Ms. V-M, applied for and began receiving public assistance grants in June 2007. On August 3, 2007, CSSD issued an Administrative Support Order;² Mr. L was served with the order on August 13, 2007.³

Mr. L requested an administrative review of the support order on August 14, 2007.⁴ CSSD issued a request for financial information⁵ to Mr. L and he provided his financial information. CSSD issued an Amended Administrative Child Support and Medical Support Order on September 28, 2007 which set child support at \$304 per month, effective November 1, 2007 and established an arrearage in the amount of \$2432 for the period beginning January 1, 2007 and ending October 31, 2007.⁶ Mr. L filed his appeal of the administrative review decision on October 8, 2007.⁷

The formal hearing commenced on October 30, 2007, before Administrative Law Judge (“ALJ”) James T. Stanley, with the Office of Administrative Hearings (“OAH”). The hearing

¹ Beginning on February 9, 2007, the physical custody of C has “bounced around” for reasons not in the record.

² Exhibit 1.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

⁶ Exhibit 7.

⁷ Exhibit 9.

was recorded. Mr. L appeared in person and Ms. V-M participated by telephone. Andrew J. Rawls, Child Support Specialist, appeared in person for CSSD.

II. Facts⁸

Mr. L is single and has been employed as a painter for approximately three years. At the time of the hearing he was earning \$17 per hour. With the advent of winter, the hours worked tend to decrease. In 2005, Mr. L earned approximately \$5000. In 2006, Mr. L earned approximately \$8000. For 2007, Mr. L expects that his gross income will be no more than \$10,000. Due to a felony conviction, Mr. L was not eligible for a 2006 permanent fund dividend (if eligible, paid in October 2007). In September of 2007, Mr. L's take home pay was approximately \$2000. For October of 2007, Mr. L expects that his take home pay will be approximately \$1200 as a result of decreased work hours. He hopes to remain with his present employer because work will "pick up" dramatically in the spring of 2008 (as it did in the spring of 2007).

Mr. L's lifestyle and spending habits are not extravagant. At the time of the hearing, Mr. L's recurring monthly expenses are approximately \$2300.⁹ He drives a paid-for 17 year old automobile and does not eat out; he does not spend any money for entertainment; he does not subscribe to internet cable service or satellite service. He does not have a "land line" telephone in his mobile home.

Mr. L's household is currently comprised of himself and his daughter, C. For reasons not articulated in the record, C was removed from her parent's home on February 9, 2007 and placed with her maternal grandmother, F V-M. Between July 5, 2007 and August 31, 2007, C was placed in foster care, and then returned home on August 31, 2007. C's placement with Mr. L is on a trial basis and will be monitored by the State of Alaska, Office of Children's Services.¹⁰

⁸ The facts stated herein are drawn from the testimony received at the hearing, and the exhibits admitted into evidence, unless another source is cited.

⁹ At the time of the hearing, Mr. L's recurring monthly expenses are as follows: \$235 for mobile home mortgage payment; \$380 for space rent (includes water, refuse, and sewer); \$150 for natural gas; \$25 for cellular telephone service; \$75 for electricity; \$250 for food; \$20 for vehicle maintenance; \$400 for gasoline; \$231 for automobile insurance; \$50 for personal items (himself and his daughter); \$120 for diapers; \$120 for tobacco; \$50 for dental services (balance of \$250); \$75 for two matters in collection (balance of \$2750); \$153 for day care. Mr. L owes his mother approximately \$2500 for attorney fees which she advanced at the time of his felony arrest; he intends to pay her when other outstanding accrued debts have been paid in full.

¹⁰ Exhibit 6, p.3.

III. Discussion

This appeal raises two issues. First, what is the correct child support amount that Mr. L should have been paying for one child? Second, is Mr. L entitled to a reduction in his child support obligation based on financial hardship as contemplated by Civil Rule 90.3(c)?

The purpose of the hearing was to inquire of Mr. L and obtain a current and accurate picture of his income and expenses. While not articulated in detail, the essence of Mr. L's testimony is that he does not have sufficient income to support his household and pay child support in the amount of \$155 per month for the period prior to his assumption of full physical custody of his daughter. If Mr. L is ordered to pay more than the minimum allowable amount of child support, he claims that he will be saddled with an unreasonable financial hardship.

Child support amounts calculated under Civil Rule 90.3 from Mr. L's actual income figures are presumed to be correct. Civil Rule 90.3(a)(1) provides that Mr. L's child support amount is to be calculated based on his "total income from all sources." Mr. L may obtain a reduction below the amount calculated, but only if he shows that "good cause" exists to support the reduction.¹¹ To establish good cause, the obligor must prove by clear and convincing evidence¹² that "manifest injustice would result if the support award were not varied."¹³ Depending upon the facts of a particular case, "good cause" might be established by showing "unusual circumstances":

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....¹⁴

The first task at hand is to calculate what amount of child support Mr. L should have been paying for one child. In its first child support order issued on August 3, 2007, CSSD calculated that Mr. L should be paying ongoing support in the amount of \$211 per month. When CSSD revisited the child support issue in its amended order of September 28, 2007, CSSD calculated that Mr. L should pay \$304 per month in ongoing child support.¹⁵ When CSSD next addressed

¹¹ Civil Rule 90.3(c)(1).

¹² The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

¹³ Civil Rule 90.3(c).

¹⁴ Civil Rule 90.3(c) (1).

¹⁵ Exhibit 7. CSSD did not know when this amended order was issued that C was living with Mr. L from and after August 31, 2007.

the support amount issue on October 12, 2007, it calculated the proper child support amount to be \$155 per month using 2006 Alaska Department of Labor data.¹⁶

The use of 2006 data to calculate Mr. L's 2007 support obligation will not work. Mr. L was incarcerated for four months in 2007 and was under house arrest for two months; accordingly, he had no income for at least four months in 2007¹⁷. While incarcerated, Mr. L's ongoing child support obligation would have been \$50 per month.¹⁸

The second task at hand is to determine whether Mr. L has grounds to support lowering his child support amount below \$155 per month. As a single parent with a young daughter in his custody, working in the seasonal construction industry, Mr. L is under pressure to manage his expenses carefully. Mr. L cannot and does not spend lavishly because his income is less than his legitimate expenses. He has a reasonably good employment history and he appears to be budgeting his expenditures as best he can. To comfortably meet his financial obligation to his child, he may need additional or different employment. Considering the record in this case, the demeanor, credibility and candor of Mr. L during the hearing, and giving significant weight to his physical and financial situation, a finding of "unusual circumstances" is warranted.

The Alaska Supreme Court considers factors that relate to the well being of the child of the order are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term "good cause," however, is to "be determined by the context in which it is used." Coats v. Finn, 779 P.2d 775, 777 (Alaska 1989). That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, Commentary I(B).^[19]

Based on the evidence in the record, this case presents "good cause" for a variance from the amount calculated from his actual income. Mr. L has proven by clear and convincing evidence that manifest injustice would result if his child support obligation were not reduced from the amount calculated.

¹⁶ Exhibit 10.

¹⁷ Mr. L may have been incarcerated in 2006. Public records (CourtView) reveal a rather extensive criminal record for Mr. L, including being charged with a Class C felony and two Class C misdemeanors in 2005. The 2007 incarceration appears to be the result of a parole violation.

¹⁸ Civil Rule 90.3(c)(3) provides that the minimum amount of child support that may be ordered is \$50 per month (\$600 per year).

¹⁹ *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

Mr L and his daughter are living together again and Mr. L is supporting the family on his meager income. Requiring him to pay child support in the amount calculated under Civil Rule 90.3 would burden the child of this order because the funds to meet that obligation come from the money that would be used to support the family at the present time. The Alaska Supreme Court places the emphasis on the children in cases where the family is once again intact²⁰. Leaving the calculated child support amount intact would be manifestly unjust for this child.

Based on all of the evidence presented, and considering the aggregate circumstances of Mr. L, I find that Mr. L's case presents unusual circumstances as contemplated by Civil Rule 90.3(c). Mr. L has proven by clear and convincing evidence that manifest injustice will result if the child support amount calculated for his child under Civil Rule 90.3 is not reduced below \$155 per month. At the conclusion of the hearing in this matter, CSSD stated its non- opposition to lowering Mr. L's child support obligation for all time periods to \$50 per month. From August 31, 2007 forward, Mr. L's ongoing child support should be suspended because he regained custody of the child.

IV. Conclusion

Based upon all of the evidence in the record, the correct child support amount that Mr. L should have been paying for one child, C, is \$50 per month, beginning on January 1, 2007. Mr. L has proven by clear and convincing evidence that payment of child support in the amount of \$155 per month will result in manifest injustice.

V. Child Support Order

Mr. L is liable for child support in the amount of \$50 per month, for the period beginning January 1, 2007 and ending August 31, 2007. Ongoing child support is suspended as of September 1, 2007, and shall remain suspended so long as Mr. L has custody of C. All other terms and condition of the Amended Administrative Child and Medical Support Order issued September 28, 2007 remain unchanged and in full force and effect.

Dated this 9th day of November, 2007.

Signed _____
James T. Stanley
Administrative Law Judge

²⁰ The record does not disclose the whereabouts of C's mother. Mr. L's family is himself and his daughter.

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 27th day of November, 2007.

By: Signed
Signature
James T. Stanley
Name
Administrative Law Judge
Title

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