



The romantic relationship between B.B. and T.X. ended many years ago, and both now have new partners. B.B. currently lives in Alaska with his girlfriend. The two have no children. His girlfriend is attending college, receiving disability benefits, and is looking for part-time employment.

B.B.'s recent history has been marked by significant health issues. When he was 16 years old, he was diagnosed with a disease, which causes inflammation of the bowel and digestive tract. For many years treatment kept his symptoms under control, and he was able to work for years in residential wiring, then eventually start his own business offering automotive electronics repair. In 2018 his profit margin was still very low as he began building a customer base, but earnings began to grow in 2019. Then his symptoms worsened, and he experienced increasing difficulty processing nutrients. Over the year he testified became so weak he struggled to even hold a wrench.

In 2020 he qualified for food vouchers, COVID-19 relief funds, and unemployment benefits. Medicaid covered regular intravenous treatments at the Hospital A Cancer Center to address his continuing poor health conditions. He did not file a tax return as he did not earn any income.

In 2021 B.B.'s health somewhat improved, and he was able to take on some electrical automotive repair work throughout the year. He was also accepted into a welding certification program through College A. He began the full-time schedule in February 2022 and is projected to graduate in December 2022. The tuition is \$27,000, but the Cook Inlet Tribal Council awarded him \$10,000 in financial assistance, and he qualified for a \$9,000 Pell grant. Based on his own research and the counsel he has received through Charter College, B.B. is confident about his prospects of finding a steady, well-paying job in the welding and fabrication field after graduating.

T.X. and her husband, who is enlisted in the military, live on base in Colorado with their own biological child, as well as C.B. and D.B. T.X. does not currently work out of the home in part because she is caring for their youngest child, as there are long waitlists at the local daycare centers. Additionally, T.X. has congestive heart failure which causes her to struggle with physical exertion, including the basic tasks of daily living, like climbing stairs. Her heart is functioning at approximately 45% capacity, which is managed through multiple medications and frequent visits to the cardiologist. The high altitude where they

live also seemingly exacerbates her symptoms, but in about a year the family will be reassigned to a new military base in a potentially new climate. Going forward her heart condition will never improve, only worsen, but it is unknown when.

### **III. Procedural History**

In May 2018 the Child Support Services Division issued an Administrative Child Support and Medical Support Order setting B.B.'s monthly support obligation for D.B. and C.B. at \$426 per month based on a primary custody calculation, beginning June 1, 2018. On May 31, 2022, the Division received a request from T.X. for a modification review. The Division sent a notice requesting income information from both parties but received no reply from B.B. Therefore, the Division based his support obligation on an imputed annual income. This resulted in an increase in B.B.'s monthly support obligation for the two children to \$1,158 effective July 1, 2022.<sup>3</sup>

On August 10, 2022, B.B. filed an appeal of the modification decision. While his appeal listed several questions about the support calculation process, the issue appropriately raised before this tribunal was his objection to the increase in the support obligation. He asserted that the Division had inappropriately imputed to him full-time wages despite his inability to hold a job. A hearing was held over two dates in September 2022. Both times T.X. and B.B. participated telephonically and represented themselves. The Child Support Services Division was represented by Child Support Specialist Mark Phang.

### **IV. Discussion**

#### *A. Child support calculation under Civil Rule 90.3(a)*

A parent is obligated both by statute and at common law to support his or her children.<sup>4</sup> 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 applicable deductions. Income includes any benefits that would have been available to the family unit should it have remained intact.<sup>5</sup> Child support can also be based on the potential income of a parent deemed voluntarily and

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<sup>3</sup> *Id.*

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

<sup>5</sup> *See* Civil Rule 90.3 Commentary, III. Defining Income.

unreasonably unemployed or underemployed, and factors to be considered are the parent's work history, qualifications, and job opportunities.<sup>6</sup>

After the Division received T.X.'s May 2022 request for a modification review, a notice requesting income verification was sent to both parties. B.B. did not submit tax returns or pay stubs reflecting his wages, nor did he send in documentation that had a medical condition preventing him from working full time. Therefore, the Division noted that he was living in an economically viable area with available employment and assumed he was able to earn an income. As B.B. held a current registered business license with the state of Alaska, his support obligation was appropriately based on full time state occupational employment and wage estimates provided by the U.S. Department of Labor for automotive service technicians and mechanics in Alaska and augmented by the Alaska Permanent Fund Dividend.

There is no indication, therefore, that the Division's calculation was in error, as it was based on the information available to the agency regarding B.B.'s circumstances and ability to work.

*B. Variance under Civil Rule 90.3(c)*

Even if the Division's child support calculation is deemed accurate, however, an obligor parent may seek a variance in the support amount if he or she shows that "good cause" exists for a reduction.<sup>7</sup> To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.<sup>8</sup> This is a high standard, and reductions based on hardship are reserved for cases involving unusual circumstances. In making this determination, it is appropriate to consider all relevant evidence, including the circumstances of the custodial parent and the child.

B.B.'s contention on appeal is that he is enrolled in a full-time welding certification program at College A and the limited side automotive jobs he takes on are all he can currently manage given his schedule. Therefore, he is unable to pay the \$1,158 ongoing support obligation for C.B. and D.B. and requests a variance.

B.B. has shown that he lives on an exceptionally tight budget. At the time of the hearing in September he had earned a net total in 2022 of \$9,707 from side automotive projects through

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<sup>6</sup> Civil Rule 90.3(a)(4).

<sup>7</sup> See *Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

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

his business. His girlfriend covers their rent, but he contributes what he can to household expenses and food costs. He owes no balance on his car but pays for gas and all related vehicle maintenance expenses. He testified he is “barely making it.”

T.X. and her family also live frugally. Their monthly household income is \$2,877; their rent is covered by the Basic Allowance for Housing (BAH) through the military. Food for their household of five people is approximately \$800 per month, and internet and cell phones average \$364. They have three vehicles, two paid in full which they owned individually prior to getting married, and one owned jointly for which they make a monthly car loan payment of \$635. The related monthly gas and vehicle maintenance expenses come to over \$620. They also spend approximately \$255 per month on personal care and entertainment. Based on her testimony and the hearing expense worksheet submitted into the record, it appears that with excellent budgeting at the end of the month their household is left with an average monthly surplus of \$200.

Clearly both B.B. and T.X. live within very restricted monthly budgets and have significant health issues that can compromise their ability to function. B.B.’s situation, however, is slightly more precarious. The last few years he has worked sporadically due to his poor health, he has no financial reserves, his unemployment benefits and COVID-19 relief funds are depleted, and his 2022 income is very limited. While his girlfriend is currently paying their rent, B.B. does not have the benefit of the stability of a spouse in the military, nor the supplemental income, or associated military benefits, including housing and medical coverage.

Additionally, B.B. has opted to assume the significant expense and debt associated with the 10-month Charter College welding program in order to ultimately better his chances of finding a stable, fairly compensated position in his field and be able to support himself and his dependents. While the immediate effect of this career change will mean a temporary inability to pay meaningful child support, when B.B. graduates C.B. and D.B. will clearly benefit from his having a consistent, steady income.<sup>9</sup>

B.B., therefore, showed by clear and convincing evidence that his support obligation as calculated under Civil Rule 90.3(a) would result in manifest injustice. There is little room in his budget for a reduction in expenses or the opportunity for an increase in income. The support obligation as calculated would force him to leave the welding program to find a job, which would not be of long-term benefit to his children. Therefore, weighing the situations of both parents

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<sup>9</sup> See Civil Rule 90.3 Commentary, III. Defining Income, C. Potential Income.

and considering the wellbeing of C.B. and D.B., B.B.'s ongoing monthly obligation should be reduced to \$200, effective July 1, 2022. After he finds employment in the coming months, either parent may file a request for a modification.

**V. Conclusion**

Through evidence presented at the hearing B.B. met his high burden of proving that his monthly support amount under the regular formula exceeds his ability to pay and would be manifestly unjust. His request for a variance of that obligation is granted under Civil Rule 90.3(c). Beginning July 1, 2022, and ongoing, B.B.'s support amount for C.B. and D.B. is set at \$200 per month.

**VI. Child Support Order**

1. B.B. is liable for child support in the amount of \$200 per month for two children effective July 1, 2022, and ongoing based on a primary custody calculation.
2. All other terms of the Modified Administrative Child Support Order dated July 18, 2022, remain in full force and effect.

Dated: September 16, 2022

*Signed*

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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 27<sup>th</sup> day of September, 2022.

By: Signed  
Signature  
Danika Swanson  
Name  
Administrative Law Judge  
Title

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