

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

IN THE MATTER OF)	OAH No. 07-0644-CSS
E. C.)	CSSD No. 001103071
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On November 27, 2007, a formal hearing was held to consider the child support obligation of E. C. (Obligor) for the support of his child, S. L., (Obligee). Mr. E. C. participated. The Custodian, S. W., did not participate. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on December 21, 2007.

This case is Mr. E. C.'s appeal of the Division's upward modification of his child support order for S. L. Having reviewed the record in this case and after due deliberation, I concluded that Mr. E. C.'s modified ongoing child support should be set at \$1,116 per month effective September 1, 2007.

II. Facts

A. History

Mr. C.'s existing monthly ongoing child support obligation was \$686 per month. The Division reviewed this child support order at Ms. W.'s request. The Division issued a Notice of Petition for Modification on August 3, 2007.

The Division issued a Modification of Administrative Support Order on September 24, 2007. The Division determined that Mr. C.'s ongoing monthly child support should be increased to \$1,530 per month.¹ The Division based its calculation of Mr. C.'s modified ongoing monthly child support on its estimate of his earnings as a member of the military stationed in Germany.

¹ Ex. 3.

This estimate included some combat pay that Mr. C. no longer receives and did not include a deduction for the cost of supporting his older child in his home.² Mr. C. requested a formal hearing.³

At the hearing, Mr. C. explained that having to pay his ongoing child support obligations based on his military compensation at his duty station in Germany is difficult. Mr. C. explained that his non-cash compensation is much higher in Germany because of the high cost of housing and other living costs. Mr. C. also explained that in addition to supporting a child in his home who is older than S. L., he is also supporting an older adult child who had completed her first year of college. Mr. C. stated that he thought that he could afford only about a \$200 increase in his ongoing child support. Mr. C. will be stationed Germany until 2010.⁴

After the hearing, Mr. C. provided updated income information and his household's financial information. The income information provided shows that he does receive an extra \$28,295.28 in military non-income pay as a result of being stationed in Germany instead of Georgia, where S. L. lives.⁵

Ms. W. also provided her income information and her household's financial information. She is a single parent, who helps support her grandparents.⁶ Ms. W. is a GS- 5 federal employee whose base pay is \$13.83 per hour, or about \$28,000 per year.⁷

The Division provided new calculations as requested. These latest calculations at exhibit 9 result in a monthly ongoing child support of \$1,116 for S. L.⁸

² Ex. 4.

³ Ex. 5.

⁴ Recording of Hearing.

⁵ Compare estimated military non-income pay at Ex. 10, page 1, with estimated military non-income pay at Ex. 9, page 1.

⁶ Ex. 13, page 1.

⁷ Ex. 12, page 1.

⁸ Ex. 8.

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that the Division's latest calculations at Ex. 9 are correct. I also conclude that it is more likely than not that the income that the Division used to calculate Mr. C.'s modified child support is the best estimate of his present income. I also find this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c). Mr. C. did not present clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not reduced.⁹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. C., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰

At the hearing, Mr. C. showed that the information that the Division had used in its modification should be updated and that he should receive a deduction for supporting his older child in his home. The Division provided new calculations including this deduction based on the updated income information.¹¹

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹² The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.¹³ Monthly child support of \$1,162 would be more than a 15 percent increase from the current order of \$686 per month.

Ongoing child support should be calculated based on C.'s estimated future income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by

⁹ Recording of Hearing.

¹⁰ Alaska Regulation 15 AAC 05.030(h).

¹¹ Ex. 5 & 6 & Recording of Hearing.

¹² Alaska Civil Rule 90.3(h)(1).

¹³ Alaska Civil Rule 90.3, Commentary X.

clear and convincing evidence that “manifest injustice would result if the support award were not varied.”¹⁴

A simple determination that Georgia’s cost of living is lower than Germany’s, is not in itself the kind of unusual circumstance contemplated by Civil Rule 90.3(c) that would justify a lower child support.¹⁵ The amount of child support otherwise required by Civil Rule 90.3 may be varied due to cost of living only if manifest injustice will otherwise result from a failure to vary child support to adjust for the disparity in the relative costs of living between where the custodial and the noncustodial parent live.¹⁶

As the Division points out in its post hearing brief, because of the relative financial circumstances of the parties’ households it would not work an injustice to require Mr. C. to pay S. L. child support based on the appropriate share of the income he receives at his duty station in Germany. In its post hearing brief, the Division calculates that Mr. C.’s household income is three and one quarter times that of the household that his child, S. L., lives in.

The additional \$28,295.28 in military non-income pay that Mr. C. receives as a result of being stationed in Germany could be viewed as primarily reimbursement the extra expenses his household incurs due to the higher cost of living at his current duty station. This \$28,295.28 could therefore be viewed not as an addition to the income that is available for child support. However, it is not clear that all of this additional income is needed to support Mr. C.’s household, or that having to pay child support based on this additional income will work an injustice.

Mr. C.’s household includes his wife, who also works and earns almost as much as Ms. W.¹⁷ The child in Mr. C.’s household is sixteen years-old, while Ms. W. pays \$200 per month in day care expenses for Mr. C.’s younger child, S. L.¹⁸ Mr. C. is providing financial assistance to

¹⁴ Alaska Civil Rule 90.3(c).

¹⁵ See Alaska Civil Rule 90.3, Commentary V.B.3. Relocation of Custodial Parent & *Robinson v. Robinson* 961 P 2d 1000 (Alaska 1998).

¹⁶ Alaska Rule 90.3(c)(1), *Robinson v. Robinson* 961 P 2d 1000 (Alaska 1998).

¹⁷ Recording of Hearing & Ex. 8 & 12.

¹⁸ Recording of Hearing & Ex. 13, page 2.

his adult child for college, but Ms. W. enrolled in college while working full-time and is paying for her own college expenses. In addition because of his special educational needs, Ms. W. pays for S. L. to receive tutoring.¹⁹ In sum, there is not clear and convincing evidence that manifest injustice will result if the child support amount of \$1,116 per month, the monthly amount calculated under Civil Rule 90.3(a) based on Mr. C.'s actual income, is not reduced.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective September 1, 2007, because the petition was served in August of 2007.²⁰

IV. Conclusion

I conclude that the Division's Modification of Administrative Support Order issued on September 24, 2007 should be adjusted downward from \$1,530 per month to \$1,116 per month based on updated information regarding Mr. C.'s income and the deductions that he is entitled to, but his monthly ongoing child support should not be further reduced to because of the high cost of living at his current duty station. Mr. C.'s modified ongoing child support obligation for S. L. will be \$1,116 per month, effective September 1, 2007.

V. Child Support Order

The Division's Modified Administrative Child and Medical Support Order issued on September 24, 2007, is amended as follows, all other provisions of that order remain in effect:

1. Mr. E. C.'s modified ongoing child support obligation for S. L. is set at \$1,116 per month, effective September 1, 2007.

¹⁹ Recording of Hearing & Ex. 13.

²⁰ Alaska Regulation 15 AAC 125.321.

2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for S. L.

DATED this 11th day of January, 2008.

By: Signed
Mark T. Handley
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of February, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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