

Through April 2017, E.K. had been working at times on the slope with Company A. The job paid better than E.K.'s current position, but E.K. has not been able to work on the slope since April 2017 due to medical issues. He does not expect to be cleared for slope work again until November 2018 at the earliest, and clearance will depend on his response to a new medication. Since April 2017, he has been working for Company B.

A telephonic hearing was held on May 8, 2018. E.K. represented himself. Child Support Specialist Brandi Estes presented the division's case. D.N., the custodial parent, participated in the hearing. The record closed on May 23, 2018.

III. Discussion

As the party who appealed, E.K. has the burden of proving by a preponderance of the evidence that the division's Modified Administrative Child Support and Medical Support Order dated March 10, 2018 is incorrect.⁴

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁵ A modification is effective beginning the first of the next month after the division issues a notice to the parties that a modification has been requested.⁶ In this case, the notice was issued on December 4, 2017, so any modification of E.K.'s child support obligation for Child A would be effective as of January 1, 2018.⁷

Civil Rule 90.3 provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources," minus allowable deductions specified in the rule. The resulting adjusted income figure is multiplied by 20% to arrive at the child support obligation for one child.⁸ The rule permits variance from this formula only "upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."⁹

A. Modification

The division argued that E.K.'s child support obligation should be increased based on his actual wage income in 2017, a total of \$119,461, "carried forward as ability to earn." However, E.K.'s job that ended in April 2017 paid better than his current position. From E.K.'s

⁴ 15 AAC 05.030(h).

⁵ AS 25.27.190(e).

⁶ 15 AAC 125.321(d).

⁷ See Exh. 2.

⁸ Civil Rule 90.3(a).

⁹ Civil Rule 90.3(c).

perspective, his wages from Company A should be disregarded in calculating his future child support obligation because he has not been able to work for Company in over a year. Also, E.K. argued that his income varies.

E.K.'s earnings history does show wide variation from year to year. Employer-reported wage information obtained by the division from the Department of Labor and Workforce Development for E.K. shows wages of \$119,461 in 2017, \$85,583 for 2016, and \$124,683 for 2015, including wages from Company A, Company B, and other employers.¹⁰ Because his income varies from year to year, his 2017 earnings alone may not be the most accurate predictor of his future earnings. E.K.'s average annual earnings for the period 2015 - 2017 are \$109,909.¹¹

Alternatively, E.K.'s likely future income could be extrapolated from his recent earnings at Company B, where he is currently employed. E.K.'s third and fourth quarter 2017 earnings at Company B totaled \$54,807.¹² Doubling this figure produces estimated annual income of \$109,614.

E.K. may not be able to return to employment with Company A. on the slope in the near future. However, he is still likely to earn wages consistent with his recent work at Company B and in line with his average annual earnings over the last three years. Based on this, \$109,000 a year is a reasonable estimate of E.K.'s future annual income.

E.K. is entitled to deductions for retirement contributions and union dues. Also, under a recent amendment to Civil Rule 90.3, he is entitled to a deduction for the amount he pays towards his own health insurance coverage.¹³ The division's original calculations did not include deductions for E.K.'s retirement contributions, union dues, or the amount he pays toward his own health insurance coverage. The division supplied revised calculations after the hearing incorporating deductions for these items.¹⁴

E.K.'s monthly support obligation should be modified to reflect his likely earnings and the deductions in the division's revised calculations. Using the deductions in the division's revised calculations and an annual wage figure of \$109,000, the formula in Civil Rule 90.3(a) yields a monthly child support obligation of \$1,125 for E.K..

¹⁰ Ex. 5 at 1.

¹¹ The division argued in its May 18, 2018 submission to record that E.K.'s annual income over the past three years averages \$117,177, however, the submission to record does not explain how this average was derived.

¹² Ex. 5 at 1.

¹³ Civil Rule 90.3(a)(1)(F).

¹⁴ May 18, 2018 submission to record, Ex. 8 at 1.

B. Variance from the formula in Civil Rule 90.3(a)

To justify a hardship exception to the child support formula, an obligor must meet a high standard of proof showing that unusual circumstances justify a variance from the child support formula. Extraordinary health expenses might be one example of unusual circumstances. However, obligations to children from a subsequent relationship and debts are generally not considered unusual circumstances.¹⁵

In this case, E.K. has significant household expenses, as detailed in his post-hearing submission. However, these expenses, which include rent, utilities, student loan and car payments, and school lunches, resemble those of many households and are not unusual.

E.K. explained that his wife has a serious progressive illness, and his son has special needs as evidenced by his individual education plan.¹⁶ However, E.K. has access to health insurance for his wife and son through his union, and he testified that his insurance pays the family's medical expenses after a \$75 out-of-pocket limit is met.

In his testimony at the hearing and the materials he provided after the hearing, E.K. did not establish by clear and convincing evidence "that manifest injustice would result" if the child support amount calculated under the formula in Civil Rule 90.3(a) were not varied in this case, as is required for a variance from the formula under Civil Rule 90.3(c).

IV. Conclusion

E.K.'s child support monthly child support obligation will be adjusted in accordance with his expected annual earnings for 2018, with the deductions specified in the Division's revised calculations. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. E.K.'s ongoing child support for Child A is set at \$1,125 per month effective January 1, 2018.

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¹⁵ Commentary to Rule 90.3 at VI.B.

¹⁶ See May 18, 2018 submission to record, Ex. 1 at 5.

2. All other provisions of the Modified Administrative Child and Medical Support Order dated March 10, 2018 remain in effect.

Dated: May 24, 2018.

Signed

Kathryn L. Kurtz
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 11th day of July, 2018.

By: Signed

Signature
Jessica L. Leeah

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.]