

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

In the Matter of	)	
	)	
S. K. C.	)	OAH No. 23-0480-CSS
_____	)	

**CORRECTED DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

S. C. appeals a Modified Administrative Child Support Order that the Child Support Services Division (Division) issued on July 18, 2023. The order increased his child support obligation for his son, U. S., from \$771 per month as set forth in the preceding order issued in 2020, to \$1,449 per month. Mr. C. appeals the decision, asserting that the calculation was based on inaccurate income information. During the hearing he also requested a variance due to financial hardship.

A telephonic hearing was held in this matter over several dates, October 4, October 23, and November 14, 2023. Mr. C. established that a recalculation of his support obligation was appropriate, given the significant change in his wages. However, he did not show that there was good cause to further reduce his obligation by way of a hardship variance. Therefore, effective June 1, 2023, and ongoing his child support obligation will be set at \$439 per month for one child based on a primary custody calculation.

**II. Facts**

*A. Relevant factual background<sup>2</sup>*

K. S. is the mother of 16-year-old U. S. In 2008, shortly after he was born, she applied for child support enforcement services through the Division. Mr. C. was established as U.’s father by an Order of Paternity.<sup>3</sup> Accordingly, Mr. C. owed a monthly child support obligation for about 6 years, until November 2014,

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<sup>1</sup> The original proposed decision issued November 22, 2023, incorrectly set an effective date for the modification as August 1, 2023. The correct effective date is June 1, 2023, and has been adjusted accordingly. This is the only change made to the original proposed decision.

<sup>2</sup> Facts are based on testimony given at the hearings, as well as hearing expense worksheets submitted by the parties.

<sup>3</sup> Test. Phang, S.. Mr. C. reportedly requested paternity testing, and Ms. S. brought U. to a designated location to provide a DNA sample. Mr. C. did not show. Consequently, the Division issued an Order of Paternity “by sanction.”

when Ms. S.'s parents assumed custody of U. As they did not request services through the Division, Mr. C. did not make any child support payments for approximately nine years, from November, 2014 – July, 2023. In August 2023 U. returned to Ms. S.'s custody, and Ms. S. reapplied for child support collection through the Division. Over the course of U.'s life, the two parents have had little to no contact.

U. and Ms. S. share a two-bedroom apartment outside of City A. They have a roommate, E., who is responsible for his own food, half of the rent, and half of the electric bill. Ms. S. works as a medical assistant and earns a net monthly income of \$2,759. She also has a part time job in the adult entertainment industry, which nets approximately \$1,250 monthly. Every month her average bills include \$158 in support for a child who is not in her custody, \$1,085 for rent (her portion), \$92 for electricity (her portion), at least \$500 for food, \$220 for cell phones, \$165 for internet, \$200 for gas, \$30 for vehicle maintenance, \$284 for insurance (health and vehicles), and \$310 for personal care/entertainment expenses for her and U. She also pays \$1,449 towards consumer debt every month. Her monthly expenses total approximately \$4,493. Subtracting this from a net monthly income of \$4,009 results in a monthly household deficit of about \$484.

Mr. C. rents a three-bedroom house in City B., which he shares with his 18-year-old son. Every other week he also has custody of his two minor sons. His minor daughter – who lives out of state - visits during school vacations. In 2022 Mr. C. earned a gross annual income of approximately \$110,226.85 as a hardware store Account Manager. His wages were largely generated from commissions on remodels booked by hardware stores in his region. Because multiple stores were remodeled in 2022, there were far few bookings in 2023, resulting in a significant drop in his 2023 income. He submitted five recent paystubs and documentation regarding his travel expense reimbursements.<sup>4</sup>

Based on this new information, the Division revisited Mr. C.'s support obligation. His projected 2023 wages – which did not include the significant commissions earned in 2022 - were recalculated by multiplying his hourly rate of \$14.75 by 86.67 (the hours worked per semimonthly pay period), resulting in a gross annual income of \$30,680. Subtracting a standard monthly deduction of \$360 for Federal income tax, Social Security,

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<sup>4</sup> Ex. 3.

and unemployment insurance, resulted in an adjusted annual income of \$26,361.44, or \$2,196.78 per month, and a monthly support obligation for one child of \$439.

Mr. C.'s monthly expenses include \$2500 in rent, \$500 for food, \$550 for utilities and cable, \$320 for cell phones, and a \$700 car lease payment. He spends \$345 per month on gas, \$449 on insurance (health/home/vehicle), a dental payment of \$350 towards a balance on his son's braces, and \$1500 to pay down consumer debt. His monthly expenses total approximately \$7,214. Subtracting this from a net monthly income of \$2,196.78 results in a monthly household deficit of about \$5,017.

Mr. C. testified that at the end of October he was laid off from his job at the hardware store and has been drawing on his savings to pay the bills. He mentioned looking for a job, although he was hoping to first get child support issues "situated." Mr. C. has retained an attorney to contest paternity in this matter before the Superior Court.

*B. Procedural history*

A telephonic hearing was held in this matter over several dates, October 4 and 23 and November 14, 2023. Mr. C. and Ms. S. represented themselves. The Division was represented by Child Support Specialist Mark Phang. The record closed on November 14, 2023.

**III. Discussion**

As the person who filed the appeal, Mr. C. has the burden of proving by a preponderance of the evidence that his support obligation as set forth in the Division's Modified Administrative Child Support Order issued on July 18, 2023, is inaccurate and should be reviewed.<sup>5</sup> Following this determination, to be granted a reduction of the established support award, Mr. C. must show by clear and convincing evidence that manifest injustice would result if the obligation were not varied.<sup>6</sup>

*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>7</sup> Under Civil Rule 90.3, a parent's child support obligation is calculated based on his or her total income from all sources during the period for which the support is being

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<sup>5</sup> 15 AAC 05.030(h).

<sup>6</sup> Civil Rule 90.3(c).

<sup>7</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

paid.<sup>8</sup> Income includes any benefits that would have been available to the family unit should it have remained intact.<sup>9</sup>

Once a parent's total income from all sources is determined, Civil Rule 90.3 calculates the parent's adjusted annual income by subtracting specified deductions, such as for federal income taxes and Social Security/Medicare withholding.<sup>10</sup> Pursuant to Alaska Civil Rule 90.3(a)(2)(a), the adjusted annual income of the noncustodial parent is then multiplied by 20% to determine the monthly child support award. This formula applies in the situation at hand, as Ms. S. exercises primary physical custody of U.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established. Mr. C.'s former obligation was \$771 per month, so a change of \$115.65 or more per month satisfies this standard.<sup>12</sup>

The effective date of any modification granted is the first day of the month following the date on which notice of the petition is served on the nonrequesting parent.<sup>13</sup> In this matter a Notice of Review was mailed to Mr. C. on May 31, 2023, resulting in a modified support order enforcement date of June 1, 2023.

The Division originally calculated Mr. C.'s projected 2023 income by combining a 2022 Permanent Fund dividend of \$2,622 with \$110,226.85 in 2022 wages, resulting in a 2023 gross income of \$112,848. Requisite deductions were subtracted for Federal income tax, social security, Medicare, and unemployment insurance, yielding a projected 2023 adjusted annual income of \$86,965.69. Multiplying this figure by 20%, the requisite percentage for one child,

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<sup>8</sup> See also 15 AAC 125.020, 15 AAC 125.030.

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

<sup>10</sup> See Civil Rule 90.3(a)(1). Other deductions include, for example, work-related childcare expenses, retirement plan contributions, and health insurance premiums for the paying parent.

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup>  $\$771 \times 15\% = \$115.65$  When the newly calculated amount is less than a 15% change, the Division also has discretion to grant the modification if three or more years have elapsed since the prior support order was issued. 15 AAC 125.321(b)(2)(C). In the present case, the modified child support obligation of \$1,449 (an increase of \$678) justifies a modification. Also, more than three years have passed since the support obligation of \$771 was set in July 2020.

<sup>13</sup> 15 AAC 125.321(d).

results in annual support obligation for U. of \$17,393.14, and monthly support obligation of \$1,449.<sup>14</sup>

Mr. C., however, testified that his income dropped significantly in 2023 and that he did not qualify for the PFD. Therefore, his income was recalculated based on his average wages/hours as reflected in recent paystubs and the PFD was not included. This resulted in an adjusted annual income of \$26,361.44, or \$2,196.78 per month, and a monthly support obligation for one child of \$439.<sup>15</sup>

Mr. C. established by a preponderance of the evidence that the July 2023 Modified Administrative Child Support Order was incorrect.<sup>16</sup> After the Division was provided additional, updated information regarding his employment situation, the more accurate recalculation of \$439 for his monthly support obligation was accepted by all parties.

*B. Variance under Civil Rule 90.3(c) as applied to ongoing support*

During the hearing Mr. C. asserted that notwithstanding the reduction of his support obligation due to the recalculation, he still could not afford \$439 monthly. His financial responsibilities beyond child support include his monthly living expenses, the costs associated with his other, younger children, and the mandatory withholding for the arrears he owes for U. Additionally, he was recently laid off. He requested a variance of his ongoing obligation.

An obligor-parent may obtain a reduction in the ongoing support amount, but only if he or she shows that “good cause” exists for the reduction.<sup>17</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>18</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.<sup>19</sup>

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<sup>14</sup> Civil Rule 90.3(a)(2)(A).

<sup>15</sup> As calculated using the Alaska Child Support Calculator, *available at* <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> See *Willis v. State, Dep’t of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

<sup>18</sup> Civil Rule 90.3(c).

<sup>19</sup> Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B. Note 15 AAC 125.075(a)(2) states “...unusual circumstances **may** include...(G) a consideration of the incomes of both parents.”

The S. household operates on a very limited budget. Even splitting rent with a roommate, Ms. S. must carefully manage her finances to avoid ending each month in a deficit. As she already works two jobs and none of her listed monthly expenses are extravagances, she has little ability to accept an additional job or trim costs.

Mr. C. is clearly in similarly difficult financial straits. With the significant reduction in wages from the year prior and the recent loss of his job, currently he is ending each month with a deficit of approximately \$5,000.

Regarding his employment situation, however, Mr. C. testified this his 2022 wages from the hardware store were largely driven by commissions from store remodels. After multiple projects were completed in 2022, Mr. C. could have foreseen that the number of possible remodels in 2023 would necessarily be much more limited. Therefore, his drop in income and ultimate layoff should not have come as a surprise to Mr. C. Months ago, he could have begun applying and interviewing for a new position in the Anchorage area. Instead, when asked about his job search he was vague, and mentioned looking after the holidays or perhaps after court ordered paternity tests confirmed he was not U.'s father. No evidence was offered at the hearing that Mr. C. is disabled in any way. Given his past job experiences as a manager and his recent accomplishments handling accounts for the hardware store, he is seemingly very qualified for multiple jobs currently posted in and around Anchorage.<sup>20</sup>

Additionally, since U. was born Mr. C. has not meaningfully contributed to his upbringing and maintenance. Nor has Mr. C. taken the steps necessary to disestablish paternity. Instead, for the first six years of U.'s life Mr. C. fell behind in support payments, resulting in the issuance of a withholding order to collect arrears. Starting in 2014, Ms. S.'s parents took custody of U. but did not request support enforcement. As a result, for almost a decade Mr. C. was not required to make any support payments, despite the fact he had legally been established as U.'s father.

The recent loss of his job undoubtably makes covering all his expenses, including child support payments, difficult for Mr. C. Given the greater context of his request for a variance, however, this is a not a situation where "good cause" exists for a payment reduction.<sup>21</sup> There is

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<sup>20</sup> See Indeed.com available at <https://www.indeed.com/jobs>. Many positions list no education or prior experience requirements and advertise wages beginning at \$20/hour.

<sup>21</sup> See *Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

no evidence that Mr. C. has ever prioritized U.'s wellbeing, as he has with his other children. He also did not credibly testify to sincere and concerted efforts to find employment, much less supplemental income. Moreover, U. will turn 18 in approximately 18 months, and Mr. C. will no longer be legally responsible for monthly child support payments.

#### **IV. Conclusion**

Mr. C. established by clear and convincing evidence that his child support obligation as calculated by the Division needed to be readdressed, given the changes in his financial situation. Accordingly, the Modified Administrative Child Support Order issued by the Division on July 18, 2023, is amended to reflect a recalculated monthly support obligation for U. of \$439, effective June 1, 2023, and ongoing. Mr. C. did not show clear and convincing evidence that manifest injustice would result if the support award calculated under the primary custody formula was not further reduced through a variance.

#### **V. Child Support Order**

1. S. K. C. is liable for child support based on a primary custody calculation in the amount of \$439 per month for one child effective June 1, 2023, and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated July 18, 2023, remain in full force and effect.

Dated: Nunc pro tunc November 22, 2023

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.]

## **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 5<sup>th</sup> day of January, 2024.

By: Signed  
Signature  
Adam Crum  
Name  
Commissioner of Revenue  
Title

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