

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

In the Matter of

M. T.

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OAH No. 23-0625-CSS

**DECISION AND ORDER**

**I. Introduction**

This case involves the modification of M. T.'s child support obligation for K., the child he shares with custodial parent B. X. Mr. T. appeals a Modified Administrative Child Support Order issued by the Child Support Services Division (Division) on September 18, 2023. The order increased his monthly support obligation for K. from \$318 to at \$486 effective September 1, 2023.<sup>1</sup> On appeal, Mr. T. disputes the accuracy of the calculation of the support obligation under Civil Rule 90.3(a) and requests a variance due to financial hardship and unusual circumstances under Civil Rule 90.3(c).

A telephonic hearing was held in this matter over two dates, October 24 and December 4, 2023. Mr. T. and Ms. X. represented themselves. The Division was represented by Child Support Specialist Shawn Pattison. Mr. T. demonstrated by a preponderance of the evidence that the Division's calculation of his child support obligation was based on incomplete information and a recalculation was necessary. He also showed by clear and convincing evidence that manifest injustice would result if his obligation was not reduced by way of a hardship variance.

Based on the evidence and after careful consideration, Mr. T.'s ongoing obligation for one child is set at \$215 per month.

**II. Facts**

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

K. X. is 15 years old. She currently resides in Florida with her mother, B. X., as well as her mother's partner and a 13-year-old half sibling. Her father, M. T., lives in City A., Alaska.

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<sup>1</sup> Ex. 4.

<sup>2</sup> Facts are based on testimony given by the parties, as well as hearing expense worksheets, tax returns, and a letter from the Birth Centersubmitted into the record.

Mr. T. and his partner C. T. share a home with five children ages 13, 5, 3, and 20-month-old twin daughters. Before the birth of twins Mr. and Ms. T. worked for her family's butcher shop. Mr. T. has long struggled with severe dyslexia and cannot read or write, so at the butcher shop his primary job responsibilities were building boxes and delivering orders for the wage of \$12 an hour.<sup>3</sup>

The twins were born prematurely, in March 2022. Mr. T. took paternity leave for several months to care for the older children, partner, and the newborn babies, who were in the intensive care unit. After the twins were released from the hospital the T.s were advised by medical professionals not to enroll them in day care due to their underdeveloped immune systems. Mr. and Ms. T. initially tried working opposite shifts so one parent could always be home to care for the children. This proved unsustainable, however, so given Ms. T.'s higher earning potential they decided she would return to work, and he would be the stay-at-home parent.

As recently as October 2023 the professional medical advice was still to keep the twins out of daycare due to their increased susceptibility to illness.<sup>4</sup> Mr. T. feels this recommendation will likely change within six months to a year, meaning he will soon have more flexibility to find, at minimum, part time employment.

Ms. T. left her position at the butcher shop in 2022 to launch her own business distributing goods to rural Alaska. This has proved to be a very time intensive venture with erratic hours, and currently she is earning a net average of \$2,500 a month. However, she expects profits to rise in the future as her company continues to grow.

The T. household budget is exceedingly tight. Besides Ms. T.'s income, the family also collects \$2,500 per month in rent from an apartment they lease, resulting in a total yearly net income of \$60,000 from all sources, or \$5,000 monthly. Their average monthly expenses include \$1,591 for the mortgage, \$660 for food, \$500 for trash and utilities, \$132 for internet, \$227 for cell phones, \$1,308 for combined car payments, \$200 for gasoline, \$453 for home and vehicle insurance, and a monthly payment of \$143 towards a dental debt for braces for one of the children. No expenses were included for

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<sup>3</sup> At the first hearing date Mr. T. was provided the numbers of various community resources dedicated to literacy. At the December hearing he gave a very positive report about reaching out to these organizations and receiving helpful support.

<sup>4</sup> See October 20, 2023 letter the Birth Center, submitted by Mr. T.

entertainment, clothing, haircuts, or house maintenance. They have no reported consumer debt. Subtracting average monthly household expenses of \$5,212 from a monthly net income of \$5,000 leaves the family with a running deficit of approximately \$212 each month. This does not include Mr. T.'s monthly child support orders for K. and another child.

Ms. X. is a medical billing specialist with ten years of experience and a stable, consistent income. Her partner, N. Q., is a mental health provider, and historically his earnings have fluctuated somewhat, as they are driven by the number of clients he sees monthly. Recently he and Ms. X. opened several new facilities together as he is transitioning into becoming a private practitioner. They expect that in the next year or so this business venture will become profitable, and their household earnings will increase. Currently, their annual net income is approximately \$80,000, resulting in average monthly earnings of \$6,665. Augmented by the \$350 in monthly child support Ms. X. receives for her younger daughter, their monthly net income from all sources averages \$7,015.

Ms. X. and her partner are in a similarly difficult financial situation. Their average monthly household expenses include a mortgage payment of \$1,940. They spend \$850 for food, \$630 for utilities, internet, and cell phones, \$1,000 for combined car payments, \$150 for gasoline, \$424 for home, health, and vehicle insurance, \$150 to service their in-home pool, and \$340 for personal care, alcohol, and tobacco. Monthly they put \$1,410 towards their consumer debt. They also have a combined total of approximately \$98,000 in student loan debt, which they are not consistently paying, and ongoing legal expenses for litigation involving an unfinished remodel of their kitchen.

Every month, after average household expenses of \$5,484 are subtracted from a gross income of \$7,015, the family is left with a surplus of \$1,531 before allotting any funds for legal fees, student loans, or consumer debt.

## **II. Discussion**

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

In a child support matter, the person who files the appeal has the burden of proving that the Division's order is incorrect.<sup>5</sup> Mr. T. filed this appeal, so he must prove by a

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

preponderance of the evidence that the September 2023 Modified Administrative Child Support Order is incorrect.

A parent is obligated both by statute and at common law to support his or her children.<sup>6</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 mandatory deductions that include support for prior children, federal income taxes, and Social Security/Medicare withholdings.<sup>7</sup> Income includes any benefits that would have been available to the family unit should it have remained intact.<sup>8</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>9</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. When the newly calculated amount is less than a 15% change, the Division still may grant the modification if three or more years have elapsed since the prior support order was issued.<sup>10</sup>

Both conditions are met in the present case. Mr. T.'s child support was previously set at \$318 per month, so a support calculation that changes his obligation by \$47.70 or more would be sufficient to modify his child support obligation.<sup>11</sup> The Division's decision increasing his obligation to \$486 thus represents well over a 15% change. And even if the change was less than 15%, it has been three or more years since the prior support order.

*B. Mr. T.'s support obligation as the non-custodial parent under the primary custody formula*

In October 2023 Mr. T. appealed the September 2023 support order increasing his support obligation to \$486. Based on the information available, the Division revaluated Mr. T.'s projected total income from all sources.<sup>12</sup> Mr. T. did not advise the Division of his most recent work history, or that he is currently a stay-at-home parent.

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<sup>6</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>7</sup> Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

<sup>8</sup> *See* Civil Rule 90.3 Commentary, III. Defining Income.

<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> 15 AAC 125.321(b)(2)(C).

<sup>11</sup> \$318 x 15% = \$47.70.

<sup>12</sup> 15 AAC 125.050(d)(1).

Therefore, in the absence of any documentation that he had a disability or medical condition preventing him from working full time, the Division calculated Mr. T.'s annual gross income as \$31,320 based on the average mean wages of a driver/sales worker in Alaska as listed in the U.S. Department of Labor State Occupational Employment and Wages Estimates.<sup>13</sup> This was augmented by a projected 2023 PFD of \$2,622, resulting in a total gross income of \$33,942.<sup>14</sup> After subtracting monthly allowable deductions, his adjusted annual income totaled \$29,141.52.<sup>15</sup> This was then multiplied by 20%, the requisite rate for the calculation of the non-custodial parent's support for one child.<sup>16</sup> Under this calculation, Mr. T.'s monthly child support obligation came to \$486 for one child.<sup>17</sup>

At the hearing Mr. T. testified about his prior work history at the butchery and employment limitations due to illiteracy. The Division recalculated his projected income based on full-time wages at \$12 an hour, or \$480 weekly, \$24,960 annually. Adding in the actual 2023 PFD of \$1,312 results in a total gross income of \$26,272. After subtracting monthly allowable deductions, his estimated adjusted annual income totals \$18,772, with 20%, or \$3,754, available for child support.<sup>18</sup> Divided equally over the year, this becomes a monthly obligation of \$313 for one child.<sup>19</sup>

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

Mr. T.'s argument on appeal is that he is unable to pay the \$313 of ongoing support obligation for K., as he is a full-time stay-at-home parent for three children and two immunocompromised toddlers. He requests 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>20</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>21</sup> This is a high standard, and reductions based on hardship are reserved

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<sup>13</sup> Ex. 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Civil Rule 90.3(a)(2)(A).

<sup>17</sup> Ex. 4.

<sup>18</sup> *Id.*

<sup>19</sup> See State of Alaska, Department of Revenue, Child Support Services, Child Support Calculator, available at <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

<sup>20</sup> See *Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

<sup>21</sup> Civil Rule 90.3(c).

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.

Both Ms. X. and Mr. T.'s households are on tight budgets, and without very careful budgeting risk ending each month in a deficit. Their routine monthly expenses are quite reasonable, with few "extravagances" that can be eliminated. Reducing Mr. T.'s support obligation, therefore, could impact the care and maintenance of K. Determining an appropriate balance between the needs of the households, therefore, requires perspective.

Every month Ms. X. and Mr. Q. put hundreds of dollars towards consumer debt. Much of it seemingly stems from major house renovations, and a stalled kitchen remodel that has become a costly legal dispute. Additionally, together they owe almost a hundred thousand in student loans. However, while they have significantly more money owing than the T. household, they also have greater financial stability. Their household of four relies on the steady incomes of two skilled professionals, and Mr. Q.'s transition into private practice is considerably less fraught with risk than launching a new business. Additionally, the debts incurred improving their home and pursuing higher education may be heavy burdens now but likely represent worthy investments in their futures and the eventual resale value of their home.

Mr. T. and his partner, in contrast, are in a far more precarious financial situation. Their large family's sole sources of income are earnings from Ms. T.'s fledgling business, and money collected from their rental unit. Neither parent is in a position to take on a second job, and there is perpetual risk that their tenants may unexpectedly vacate or default on the rent. Additionally, until he receives the literacy assistance he needs, Mr. T.'s employment options will be limited by his dyslexia. Completing advanced schooling to qualify for higher paying jobs will represent an aspirational goal.

Despite these obstacles, Mr. T.'s need for a variance will seemingly be short lived. In the next year the twins may be sufficiently healthy to attend daycare, and he will be able to seek work outside the home. Ms. T.'s business will hopefully become increasingly profitable and sustainable.

In the interim, Mr. T. has met his burden for a variance. Given the circumstances and competing interests, lowering his support obligation to \$215 strikes a balance between the households, giving him a financial reprieve, and Ms. X. needed support for K.

### III. Conclusion

Through evidence presented at the hearing, Mr. T. established by a preponderance of the evidence that his support amount needed to be recalculated based on more complete information, resulting in a monthly support obligation of \$313. He also met his high burden of proving that this monthly support amount as calculated under Civil Rule 90.3(a) 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 September 1, 2023, and ongoing, Mr. T.'s monthly support obligation for K. is set at \$215 per month.

### IV. Child Support Order

1. M. T. is liable for child support in the amount of \$215 per month for one child based on a primary custody calculation, effective September 1, 2023 and ongoing.
2. All other terms of the Modified Administrative Child Support Order dated September 18, 2023, remain in full force and effect.

Dated: December 21, 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 5th day of February, 2024 .

By: Signed  
Signature  
Adam Crum  
Name  
Commissioner of Revenue  
Title