

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

IN THE MATTER OF: )

T. E. W. )

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) OAH No. 08-0002-CSS

) CSSD No. 001148414

**CORRECTED DECISION AND ORDER**

**I. Introduction**

The Obligor, T. E. W., appeals the Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued December 17, 2007. The order sets Mr. W.'s child support payment at \$1,141 per month. Mr. W. appealed arguing that the income calculation was incorrect. The Obligee child is L. A. W., DOB 00/00/03.

A hearing was held on January 16, 2008. Mr. W. appeared in person and represented himself. The Custodian, L. Q. W., did not participate in the hearing.<sup>1</sup> The hearing was recorded. Andrew Rawls, child support specialist, represented CSSD. Rebecca Pauli, Administrative Law Judge, Alaska Office of Administrative Hearings, presided over the hearing.

**II. Facts**

This matter was initiated when the State of Georgia sought establishment of a child support order under the Uniform Interstate Family Support Act.<sup>2</sup> CSSD first served Mr. W. with an Administrative Child Support and Medical Support Order in August 2007. This order set Mr. W.'s child support obligation at \$648 per month. Mr. W. requested that his matter be put on hold under the Service Members Civil Relief Act and requested an administrative review.<sup>3</sup> Mr. W. subsequently provided current financial information<sup>4</sup> and CSSD issued an Amended Administrative Child Support and Medical Support Order on December 17, 2007. The amended order increased Mr. W.'s child support obligation to \$1,141 per month, effective January 1, 2008.<sup>5</sup> Mr. W. appealed arguing that the income upon which CSSD based its calculations was not an accurate representation of his actual income and that he needed time to gather the

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<sup>1</sup> Ms. W. had contacted the OAH on January 10, 2008, and stated that she would not be participating in the hearing.

<sup>2</sup> AS 25.25.101-.903; Exhibit 1, 6/4/07 Georgia Petition.

<sup>3</sup> Exhibits 3 and 4.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Exhibit 7.

appropriate paper work.<sup>6</sup> Specifically, Mr. W. challenged CSSD's inclusion of combat pay and family separation allowances when calculating his income. Mr. W. also challenged CSSD's failure to recognize the health care coverage he provides for L.

In response, CSSD prepared a revised child support calculation that did not include Mr. W.'s combat pay and family separation allowance. The revised calculation resulted in a child support obligation of \$812 per month. CSSD believes that this is the correct monthly child support amount.

After reviewing CSSD's recalculation, Mr. W. argued that a variance is appropriate because an increase in his monthly child support obligation by \$341 would impose a substantial hardship on his subsequent family and is manifestly unjust. Mr. W. has been paying child support for L. since November 2004. He originally paid \$350 per month through a discretionary allotment from his monthly pay.<sup>7</sup> Mr. W. testified that in November 2007, he increased the amount of support to \$500 per month.<sup>8</sup> However, his Leave and Earnings Statements reflect a discretionary allotment in the amount of \$500 as early as September 2007.<sup>9</sup> Mr. W. agreed that the recalculation performed by CSSD accurately reflected his wage income and military non-income pay, but he believes that to increase his monthly child support obligation from \$500 per month to \$812 per month is manifestly unjust and will cause a financial hardship on his family.

Mr. W. is married and has a subsequent child, a son, DOB 00/00/05. His monthly adjusted income, including military non-income pay is \$4,060.76.<sup>10</sup> His wife earns approximately \$3,000 per month and pays child support in the amount of \$750 per month for her prior children. They pay \$1,725 a month in rent. Mr. W. estimated their food and utility expenses are \$817 per month. He owes approximately \$57,000 on two vehicles, a 2005 Dodge Ram and a 2007 Dodge Durango. He pays \$1,180 per month on the loans, and estimates his monthly gas, maintenance, and insurance costs are \$705 per month. Mr. W. expressed concern over the rising price of gas and its financial impact on household expenses. He also owes \$2,000 for a motorcycle he purchased in 2005. His loan payment for the motorcycle is \$300 per month. Mr. W. estimates his other miscellaneous expenses total \$370 per month. He has outstanding

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<sup>6</sup> Exhibit 8,

<sup>7</sup> W. Testimony and Document 1.

<sup>8</sup> *Id.* and Exhibit 6.

<sup>9</sup> Exhibit 6, p.3.

<sup>10</sup> Exhibit 9

credit card debt of at least \$8,500 which he pays at the rate of \$436 per month. He also provides financial assistance to his mother in varying monthly amounts. Finally, he pays \$584 per month for child care for his son. When he works late his child care expense may increase by as much as \$250.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support payment is to be calculated based on his or her "total income from all sources." Child support determinations calculated under Civil Rule 90.3 from an Obligor's actual income are presumed to be correct. An Obligor parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction.

In order to establish "good cause," the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>12</sup> If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction in the support award. Unusual circumstances do not include the existence of subsequent children of the obligor parent unless the obligor shows that "failure to vary the support award ... would cause substantial hardship to the subsequent children."<sup>13</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. The Obligor did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not varied. Mr. W. has regular household expenses of about \$5,300 per month (which will be reduced to \$5,000 per month later this year when his motorcycle loan is paid) excluding child support, and his adjusted annual income is \$48,729.12 per year, which equals \$4,060.76 per month.<sup>14</sup> Granted, the Obligor's expenses are greater than his net income, but simply having monthly living expenses or debts that equal or even exceed one's net income does not, as a matter of law, constitute sufficient reason to vary a child support award.

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<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>12</sup> Civil Rule 90.3(c).

<sup>13</sup> 15 AAC 125.075(a)(2)(F).

<sup>14</sup> Exhibit 9.

Moreover, it is difficult to understand why the Obligor believes he is incapable of meeting this child support obligation. Mr. W. argues that an increase in child support will impose a substantial hardship on his subsequent child relying, in part, on the fact that his monthly expenses exceed his monthly income. This argument is disingenuous because he is not including his wife's income. When, as here, an Obligor argues a variance is necessary to avoid imposing a substantial hardship on a subsequent child or children, it is appropriate to consider the income of both parents of the subsequent child or children.<sup>15</sup> Mr. W. testified that his wife earns \$3,000 per month. When their incomes are combined, the monthly household income exceeds their monthly expenses.

Being required to pay child support for L. may result in difficult budgeting adjustments for Mr. W. Mr. W.'s duty to support L. takes priority over other debts and obligations, including subsequent children.<sup>16</sup> Thus, in the absence of clear and convincing evidence of manifest injustice, L. is entitled to receive child support in an amount commensurate with Mr. W.'s ability to pay as calculated under Civil Rule 90.3, which is \$812 per month, effective May 1, 2007.

Mr. W. is entitled to a credit in the amount of \$350 per month from May 1, 2007 through August 31, 2007. He is also entitled to a credit in the amount \$500 per month from September 1, 2007 through January 1, 2007 and any additional month that he can establish he paid the allotment.

Mr. W. testified that he is providing health care for L. He should contact his case worker on this matter to see if he is entitled to an adjustment under 15 AAC 125.432.

#### **IV. Conclusion**

Mr. W. met his burden of proving that the Amended Administrative Child Support and Medical Support Order issued December 17, 2007, overstated his income and thus his monthly child support obligation. However, Mr. W. did not meet his burden of proving by clear and convincing evidence that manifest injustice will result unless the child support award is varied. Using the correct income figures, the appropriate child support amount should be \$812 per month, effective May 1, 2007.

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<sup>15</sup> Commentary Civil Rule 90.3 Part IV(B)(2).

<sup>16</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998); Commentary Civil Rule 90.3 Part IV(B)(2).

**V. Order**

- Mr. W. is liable for modified ongoing child support in the amount of \$812 per month, effective May 1 2007, and ongoing.
- All other provisions of the Amended Administrative Child Support and Medical Support Order issued December 17, 2007, remain in effect.

DATED this 25<sup>th</sup> day of January, 2008.

By: Signed  
Rebecca L. Pauli  
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 11<sup>th</sup> day of February, 2008.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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