

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

IN THE MATTER OF)	
)	
N. M.)	Case No. OAH-08-0003-CSS
_____)	CSSD Case No. 001145871

DECISION & ORDER

I. Introduction

The obligor, N. M., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on April 4, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January 23, 2008. Mr. M. appeared by telephone, as did the custodian of record, A. B. David Peltier represented CSSD by telephone. The child is K. B. (DOB 00/00/06). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

II. Facts

Mr. M. and Ms. B. were never married to each other. K. was born on 00/00/06. Mr. M. is married and has another child living in his home who was born about two months after K. Mr. M. became aware that K. was his biological child in April of 2007. Ms. B. was married at the time K. was born, but she has recently divorced. Ms. B. has one older child who was born in 2003, and she was pregnant at the time of the hearing.

There is no dispute about Mr. M.'s income. Mr. M. is E-4 in the Air Force. Near the end of 2007 he was transferred from Eielson Air Force Base to a duty station in Idaho, and his income was reduced dramatically. By applying the Civil Rule 90.3 formula to Mr. M.'s actual income, CSSD has calculated Mr. M.'s support obligation to K. to be \$718 per month for one child in 2007, lowering to \$535 per month for 2008 and ongoing.

Ms. B. is an E-5 in the Air Force. Both Ms. B. and Mr. M. provided details of their financial situations. For the most part, neither party suffers any unusual extraordinary financial burdens, beyond the burdens typical of any young family. Mr. M. has accrued approximately \$5,000 in assorted debt, while Ms. B. has accumulated about \$13,000 of assorted debt and appears to be having trouble making some of her payments. Ms. B. will have three children in a household with one parent, whereas Mr. M. has one child in a household with two parents.

III. Discussion

Child support is calculated by applying a formula contained in Civil Rule 90.3 to the obligor's income. There is no dispute that CSSD has correctly applied Civil Rule 90.3 to Mr. M.'s actual income. The calculation does reflect what appears to be Mr. M.'s principal concern on appeal, that after his transfer his income has decreased significantly. This change is reflected in the drop in the monthly child support amount from \$718 per month in 2007 to \$535 per month for 2008 and ongoing.

Mr. M. argues that even the decreased amount of support is unfair and will limit his ability to provide for the members of his family who live in his household. He also argues that although K. is older than his other child, the two month difference is of little significance.

Civil Rule 90.3(c) permits a variation from the standard support formula only upon "good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied." Any variation must be described in writing with the reasons supporting the variation.¹ "Good cause" may include unusual circumstances which require variation to an amount that is "just and proper for the parties to contribute toward the nurture and education of their children."² In determining whether to vary a support award, consideration must be given to the custodial parent's income.³

The difference in the monthly support that is made by a slight difference in the ages between K. and Mr. M.'s other child is significant. If the other child had been born just two months sooner, the credit for support of that child would result in Mr. M.'s support for K. being reduced to \$428 per month for 2008 and ongoing, a difference of \$107 per month. It is hard to imagine how any policy behind the rule that allows a credit for older children but not younger children could apply to this case. This situation is very different from the more typical one in which a parent has one family, is then divorced and begins a second family with full knowledge that he has previous children to support. Neither Mr. M. nor his wife had any way of knowing, at least with any certainty, that Mr. M. already had one child on the way at the time they decided to have their child.

The purpose of child support is to provide for the interests of children. From that perspective, the interests of Mr. M. and Ms. B. are of less concern than the relative interests of

¹ Civil Rule 90.3(c)(1).

² *Id.*

³ *Id.*

the children. While one could argue that K.'s higher level of support is merely fortuitous, that does not necessarily mean that Mr. M.'s second child suffers manifest injustice. The fact that the custodian's income must be considered indicates that the totality of circumstances should be considered. K. has one parent in a household she will be sharing with two siblings. Mr. M.'s other child has two parents in the household and no siblings, at least at this point. While Ms. B. might earn a bit more than Mr. M., her finances appear to be suffering greater strain due to the children in her household and her pregnancy. While one could argue credibly that in this situation the rule does not reach a perfect degree of fairness, this case does not present clear and convincing evidence of manifest injustice.

IV. Conclusion

CSSD has correctly calculated Mr. M.'s support obligation by applying the Civil Rule 90.3(a) formula to Mr. M.'s actual income. This case does not present clear and convincing evidence of manifest injustice warranting a variation from the Civil Rule 90.3(a) formula. Support should be set as calculated by CSSD in Exhibits 8 and 9.

V. Order

IT IS HEREBY ORDERED that Mr. M.'s monthly child support obligation for one child be set as follows:

January 1, 2007 – December 31, 2007: \$718

January 1, 2008 – ongoing: \$535

All other provisions of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on April 4, 2007 shall remain in effect.

DATED this 4th day of March, 2008.

By: Signed _____
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 20th day of March, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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