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

In the Matter of	)	
	)	
N. D. III	)	OAH No. 23-0068-CSS
	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of N. D.'s child support obligation for L., the daughter he shares with custodial parent M. E. Mr. D. appeals a Modified Administrative Child Support Order issued by the Child Support Services Division (Division) on December 9, 2022. The order raised his monthly support obligation for L. from $336 to $633 effective November 1, 2022. On appeal, Mr. D. disputes the accuracy of the calculation of the support obligation under Civil Rule 90.3(a) and requests a variance due to financial hardship under Civil Rule 90.3(c).

A telephonic hearing was held in this matter on February 13, 2023. Mr. D. represented himself. Ms. E. elected not to participate.[1] The Division was represented by Child Support Specialist Mark Phang. The Division's support calculation proved accurate, but Mr. D. 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. D.'s ongoing obligation for L. should remain as previously set at $336 per month.

II. Facts[2]

In 2016 Mr. D. retired from the military due to serious medical issues. A staph infection that began in his leg and spread to his heart kept him restricted to a wheelchair. He suffered pulmonary failure, narrowly escaped having his leg amputated, and struggled with post traumatic stress disorder (PTSD). He and his wife were living in City A. to be close to family, as at the time they had small children and needed help with childcare. However, the shootings in the alleys near their home proved very traumatic for him, so with

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[1] On February 1, 2023, Ms. E. contacted the Office of Administrative Hearings and spoke to administrative staff. She stated that she did not want to be contacted for the February 13, 2023, hearing as she had no information to present and would be satisfied with any decision reached.

[2] Facts are based on testimony given by Mr. D., as well as paystubs and a hearing expense worksheet he submitted into the record.

the encouragement of his therapist at Veteran's Affairs, he and his family relocated to Military Base A. The military offered him "unemployability status," but he declined, choosing instead to try to be able to work again.

In the years following, Mr. D. has made slow, but significant progress in his rehabilitation. After taking drugs for years related to the staph infection, he now can walk, albeit with a limp. He requires regular "scopes" on his leg, but to date has avoided needing a major surgery. He reports that his mental health has improved, only occasionally seeking out his therapist. In 2020 he took a job at Business A., near the base, as it offered flexible hours and shifts, which is all he can commit to due to the current childcare needs in his home.

Mr. D. and his wife have a blended household. Between the two, they have three children in their home, ages 14, 11 and 10 years old. One has epilepsy and another requires speech therapy. His wife is a flight attendant, so due to her irregular schedule she is often not available to pick up the children from school or take the kids to their medical appointments. Mr. D. also has a 19-year-old son in college. Due to Mr. D.'s military service his son's tuition is paid, but the young man still requires money for textbooks and food.

Mr. D. testified he works an average of 24 hours a week at Business A. depending on his wife's shifts, at an hourly rate of approximately $13. He submitted paystubs to corroborate his testimony, which was also confirmed by his employer. As calculated by the Division, this resulted in annual wages totaling $16,224, augmented by his military retirement pay of $27,624 resulting in a total gross income of $43,848.[3] After subtracting the appropriated deductions for Social Security, Medicare, Federal income tax and state tax, his adjusted annual income came to $38,004.12 or $633 in a monthly support obligation for one child.[4] After reviewing the numbers on the record, Mr. D. agreed that the calculation was accurate, and the Division had made no errors.

However, Mr. D. testified about the current financial circumstances of his household. Combined, his adjusted annual income of $38,004.12 and his wife's gross income of $23,904 equal $61,908.12. Monthly they spend $2199 on rent, an average of $400 on food

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[3] Ex. 3, p. 6-7.
[4] *Id.*

at home, $50 out of the home, $150 on gas, $100 for internet, $100 for cellular phones, $240 on gasoline, $41.66 on vehicle maintenance, $334 on vehicle insurance, $80 on entertainment, $80 on personal care, $10 on seizure meds. At the advice of the financial advisor at their bank they took on the personal debt of combined monthly car payments for two vehicles of $1,131.78 to improve their credit scores in the hopes of eventually qualifying for a house loan, as a mortgage payment would be lower than their monthly rent. The total monthly income of their household is $5,159.01. Their monthly expenses total $4,916.44, not including a significant monthly credit card payment for expenses associated with the death of his father-in-law. The remaining household balance is $242.57.

III. Discussion

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.[5] 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 applicable deductions. Income includes any benefits that would have been available to the family unit should it have remained intact.[6]

A review of the Division's calculation of Mr. D.'s support obligation for L. vis a vis the paystubs he submitted, his testimony at the hearing, and the information submitted by his employer indicate no errors were committed.

B. Variance under Civil Rule 90.3(c)

Mr. D.'s argument on appeal is that he is unable to pay the $633 ongoing support obligation for L. in addition to the current living expenses of his family. 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.[7] To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.[8] 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

5 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
6 *See* Civil Rule 90.3 Commentary, III. Defining Income.
7 *See Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).
8 Civil Rule 90.3(c).

consider all relevant evidence, including the circumstances of the custodial parent and the child, if possible.

Unfortunately, Ms. E. did not participate in the hearing, so it is not possible to evaluate the financial stability of the household where L. lives and balance the situations of both parents.

Only Mr. D.'s household can be assessed, and it is clear that he and his wife are in an undeniably difficult financial situation. He has shown by clear and convincing evidence that a support obligation of $633 as calculated under Civil Rule 90.3(a) would result in manifest injustice. There is little room in their budget for a reduction in expenses, so to avoid falling into debt every month he and his wife must be scrupulous with their finances.

Therefore, Mr. D.'s child support obligation for L. should remain as previously set at $336 per month beginning November 1, 2022, until his current household situation changes and he is able to work more hours, or he finds an equally flexible job that pays higher wages. While even an obligation of $336 makes his household expenses greater than the incoming wages, it is expected he will do whatever is necessary to make this monthly payment.

IV. Conclusion

Through evidence presented at the hearing Mr. D. met his high burden of proving that his 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 November 1, 2022, and ongoing, Mr. D.'s support amount for L. is set at $336 per month.

V. Child Support Order

1. N. D. III is liable for child support in the amount of $336 per month for one child effective November 1, 2022, and ongoing.
2. All other terms of the Modified Administrative Child Support dated December 9, 2022, remain in full force and effect.

Dated: February 13, 2023

SIGNED

Danika B. Swanson
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 February 28th, 2023

By: SIGNED
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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