

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

In the Matter of	)	
	)	
N. T.	)	OAH No. 23-0196-CSS
_____	)	

DECISION AND ORDER

I. Introduction

N. T. appeals a Modified Administrative Child Support Order that the Child Support Services Division (Division) issued on February 10, 2023. The order increased his monthly child support obligation for his daughter, R. Q.-T., from \$215 as set in 2016 to \$542. Mr. T. appeals the decision, asserting that he cannot afford to pay that amount, as well as support his two “subsequent children” born after R. He seeks a variance based on financial hardship.

Through the testimony and evidence presented at the hearing Mr. T. did not show by clear and convincing evidence that manifest injustice would result if his monthly support obligation was not further reduced by way of a hardship variance. Effective January 1, 2023, and ongoing his child support obligation will remain as set at \$542 per month for one child based on a primary custody calculation.

II. Facts

A. Material Facts

N. T. and L. Q. are the biological parents of 9-year-old R. Mr. T. and his girlfriend live in Texas with their approximately 18-month-old baby, while Ms. Q. and R. share a home in Anchorage, Alaska. Mr. T. also has another child - just slightly younger than R. - who does not live with him.

B. Procedural History

On February 8, 2016, the Division issued an Administrative Child Support Order setting his monthly support obligation for R. at \$215.¹ In December 2022 the Division initiated a modification review based on a verbal request from Ms. Q., as more than three years had passed

¹ Ex. 1.

since the order had last been reviewed.² The Division served a Notice of Petition for Modification of Administrative Support Order on the parties on December 15, 2022, but Mr. T. did not provide the requested income information.³ On February 10, 2023, the Division issued a Modified Administrative Child Support Order finding that a modification of his support obligation was appropriate, as there had been material change in circumstances.⁴ Relying on employer reported wages, his monthly support obligation for one child was set at \$542 based on a primary custody calculation.⁵

On March 7, 2023, the Division received an Appeal of Modification Decision from Mr. T..⁶ He did not object to the accuracy of the calculation of the obligation by the Division. Instead, he claimed financial hardship as he also supports two other minor children besides .. A telephonic hearing was held in this matter over several dates in April, May and June 2023. Mr. T. and Ms. Q. participated telephonically and represented themselves. The Child Support Services Division was represented by Mark Phang.

III. Discussion

As the person who filed the appeal, Mr. T. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support Order that the Division issued on February 10, 2023, requires adjustment.⁷ His written appeal requests a reduction of his support obligation due to economic hardship. However, at the hearing he offered limited details regarding his household finances.

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.⁸ 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 paid.⁹ Income includes any benefits that would have been available to the family unit should it have remained intact.¹⁰

² Ex. 2.

³ Ex. 3,4.

⁴ Ex. 3.

⁵ *Id.*

⁶ Ex. 4.

⁷ 15 AAC 05.030(h).

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

⁹ *See also* 15 AAC 125.020, 15 AAC 125.030.

¹⁰ *See* Civil Rule 90.3 Commentary, III. Defining Income.

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, Social Security and Medicare withholdings.¹¹ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards in cases where one parent has primary physical custody. This formula applies in the situation at hand, as Ms. Q. exercises primary physical custody of R.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² 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. T.'s former obligation was \$215 per month, so a change of \$32.25 or more per month satisfies this standard.¹³ A modification is effective beginning the month after the parties are served with notice of the request for a modification review.¹⁴ Here, the Division provided notice in December 2022, so the modification is effective as of January 2023.

Regarding Mr. T.'s "income from all sources," the Division relied on employer reported wages of \$38,123 to determine his gross annual income. Standard monthly deductions were subtracted, resulting in an adjusted annual income of \$32,513.84. This was multiplied by 20%, resulting in an annual support obligation for R. of \$6,502.77, or \$542 monthly.

At the hearing, all parties agreed that the Division correctly calculated Mr. T.'s support obligation for R.

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

Mr. T.'s argument on appeal is that he is unable to pay the \$542 ongoing support obligation for R. in addition to his monthly living expenses and the support he pays for his additional two children. 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.¹⁵ To establish good cause, the parent

¹¹ See Civil Rule 90.3(a)(1).

¹² AS 25.27.190(e).

¹³ $\$215 \times 15\% = \32.25 . When the newly calculated amount is less than a 15% change, CSSD 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 \$542 (an increase of \$327) justifies a modification. Also, seven years have passed since the establishment of the support obligation in 2016.

¹⁴ 15 AAC 125.321(d).

¹⁵ See *Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).

must show clear and convincing evidence that manifest injustice would result if the support award were not varied.¹⁶ 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.¹⁷

Ms. Q. and her daughter live independently. During the academic year she works for the school district, and in the summer months she drives for Company A, a food delivery service. Her gross annual income is \$29,087, or \$2,424 monthly. Her monthly expenses include \$1,300 for rent, \$770 for food, \$731 for phone and utilities, \$160 for gasoline, \$1,200 for childcare, and \$1,031 for health/home/car insurance. Without including any money spent on clothes, haircuts, medical expenses, personal debts, her monthly expenses total \$5,192. Her monthly expenses, therefore, eclipse her monthly income by more than \$2,768. Ms. Q. testified that she is currently making ends meet by relying on credit cards. She also expects to soon be approved for a daycare credit for R., which will lower her childcare expenses.

For the last two years Mr. T. has worked as a warehouse technician, delivering medical supplies. His gross annual income is \$38,123, or \$3,177 monthly. His monthly expenses include \$950 for rent, \$230 for food, \$466 in utilities and a cell phone, \$80 for gasoline, \$23 for vehicle maintenance, \$390 for insurance, \$125 for childcare and \$150 for entertainment/personal care. Subtracting his monthly debt average of \$2,414 from his monthly income of \$3,177 results in a surplus of \$763 before including child support payments of \$335 for the second “subsequent child,” his student loan debts, or any monies spent on his own clothes, haircuts, or incidentals.

However, Mr. T. lives with his long-term girlfriend and their child - one of his two “subsequent children” - and although he acknowledged his girlfriend assists with household expenses, he refused to share income information from her full-time job. He grew increasingly irritated that her financial impact was being considered and advised that if there were any additional questions about her employment an attorney would be retained. It was not possible,

¹⁶ Civil Rule 90.3(c).

¹⁷ Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary VI.B.2. *Note* 15 AAC 125.075(a)(2) states “...unusual circumstances may include...(G) a consideration of the incomes of both parents.”

therefore, to fully assess the financial situation of the household, nor Mr. T.'s girlfriend's income or potential income as a parent of a "subsequent child."¹⁸

A general review of the two households indicates that while both are living on a tight budget, Mr. T. appears to be in a better financial situation than Ms. Q.. It is impossible to be sure, however, because while Mr. T. requested a variance as he asserted his other two children would suffer if he paid R.'s augmented support obligation, he refused to participate in the requisite inquiry regarding his live-in girlfriend's income under Civil Rule 90.3. An argument against an increased child support obligation for one child necessarily implicates an evaluation of the impact of the increase on the "subsequent children." Therefore, due to his refusal to be forthright about finances, he did not establish that his circumstances met the high threshold of manifest injustice.

IV. Conclusion

Mr. T. has not shown clear and convincing evidence that manifest injustice would result if the support award calculated under the primary custody formula is not reduced. Therefore, the Division's February 10, 2023 Modified Administrative Child Support Order is AFFIRMED, setting Mr. T.'s support obligation at \$542 per month for R. Q.-T. effective January 1, 2023, and ongoing.

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V. Child Support Order

1. N. T. is liable for child support in the amount of \$542 per month for one child effective January 1, 2023, and ongoing.
2. All other terms of the Modified Administrative Child Support Order dated

¹⁸ Civil Rule 90.3, Court Commentary, VI. B.2..."In considering whether substantial hardship to "subsequent" children exists, or whether the existence of a subsequent family should defeat a motion to increase child support, the court should consider the income, including the potential income, of both parents of the "subsequent" children."

February 10, 2023, remain in full force and effect.

Dated: June 19, 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 this 5th day of July, 2023

By: SIGNED
Signature
Danka B. Swanson
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.]