

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

IN THE MATTER OF:)

J. N. S.)

) OAH No. 08-0093-CSS

) CSSD No. 001132343

DECISION AND ORDER

I. Introduction

The Obligor, J. N. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 13, 2008. The Obligee child is T., DOB 0/00/04. The other party to the case is H. V. F., T.’s mother.

The hearing was held on March 17, 2008, and April 2, 2008. Mr. S. appeared in person at the first hearing, but not the second. Ms. F. did not participate in the first hearing but she appeared in person at the second hearing. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, Mr. S.’ child support should be modified to \$252 for December 2007 and \$375 per month, effective January 1, 2008, and ongoing.

II. Facts

A. History

Mr. S.’ child support for T. was set at \$50 per month in March 2005.¹ Ms. F. requested a modification on November 15, 2007.² On November 20, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. S. provided income information.⁴ On February 13, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S.’ child support to \$277 per month, effective December 1, 2007.⁵ Mr. S. appealed on February 22, 2008, asserting his child support amount is

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exh. 4.

⁵ Exh. 5.

too high and he cannot afford to pay it. He also stated he supports a child older than T. in the home.⁶

B. Material Facts

Mr. S. is currently employed by Husky Foods; he earns \$11 per hour working full-time in the company's warehouse.⁷ It is estimated that this job provides Mr. S. with annual income in the approximate amount of \$22,880 (\$11 times 2080 hours). He also has had a part-time job since early 2008 doing janitorial work for 20 hours per week at \$10 per hour. His annual income from this second job provides Mr. S. with a total of \$10,400 per year (\$10 times 1040 hours). The total annual income from these two jobs is estimated to be \$33,280 in 2008. In 2007, Mr. S. had reported earnings of \$16,441.22.⁸

Mr. S. has four children older than T.: G., for whom he pays \$50 per month out of pocket, plus some daycare expenses; S., who is 12 years of age, and for whom he pays \$50 per month through CSSD; K., 11 years of age, for whom he pays \$60-\$70 per month directly to the child; and J., 6 years of age, for whom he pays \$469 per month through CSSD, pursuant to a proposed decision and order issued by the undersigned on July 25, 2008. Mr. S. did not provide any documentation or verification of the cash child support payments he claimed he pays for G. and K.

Mr. S. testified that his daughter S. lives with him in his home and on that basis requested an additional deduction from his income for supporting a prior child in the home, pursuant to Civil Rule 90.3(a)(1)(C). Mr. S. further stated that his aunt or sister provides daycare for S. because he has two jobs and is away from home a considerable amount of time. He agreed to provide copies of T.'s school records because he believed they would indicate either that she lives at Mr. S.' address or that she lives with her father.

Mr. S.' testimony that S. lives with him in the home is not credible. Mr. S. participated in a hearing in the child support case for his prior child J. before the undersigned administrative law judge on April 8, 2008 and in that hearing presented testimony wholly inconsistent with his testimony here.⁹ In that case, he said S. no longer lived with him, that she left during the first

⁶ Exh. 6.

⁷ Except where indicated, the facts are taken from Mr. S' hearing testimony.

⁸ Exh. 14.

⁹ In the Matter of J. N. S., OAH No. 08-0156-CSS.

week in March 2008, when she went to California to join her mother, who had earlier moved there from Alaska. Mr. S. said that he could not remember the exact date of S.'s departure, but it was definitely before March 17, 2008 (the date of the hearing in this case in which he testified S. lives with him in his home). Mr. S. also claimed in the other hearing that S. would be returning to Alaska this summer (2008) because he was going to be assuming custody of her pursuant to the mother's request and that they had filed documents in court in Alaska to provide for the modification of S.'s custody.

The Anchorage School District ("ASD") records Mr. S. provided in an effort to prove S. lives with him actually show that S. was withdrawn from the ASD on November 5, 2007, and that she had gone to a school district located in California.¹⁰ Furthermore, S.'s records indicate she lives with her mother; there is no reference to Mr. S. or his address anywhere in S.'s school records.¹¹ Mr. S. also did not provide copies of any of the documents he said had been filed in the Anchorage Superior Court in order to modify S.'s custody. Finally, Mr. S. did not explain why he would be paying support for S. through CSSD if she were living in the home with him.

Mr. S. has monthly expenses of approximately \$2100, which consisted of \$600 for rent; \$250 for food; \$45 for electricity; \$100 for internet and cell phone; \$100 for cable; \$301 for the payment on a 2002 Mercury Mountaineer that he purchased in September 2007; \$230 for gasoline; \$171 for vehicle insurance; \$29 for health insurance; \$80 for entertainment; \$125 for personal care items; \$50 for clothing; and \$20 on a credit card bill of \$320.

III. Discussion

A. Income

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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹² If the newly calculated child support amount is more than 15% different than the previous order, the Rule

¹⁰ Exh. 15 at pg. 3. Mr. S. filed this exhibit with CSSD so that it could be used in both cases, but it was submitted to the OAH only in J.' case (OAH 08-0156-CSS). The first three pages of the document have been copied to the file in this case and, with the exception of her mother's first name the identifying information for the child and her mother has been redacted.

¹¹ *Id.*

¹² AS 25.27.190(e).

assumes a material change in circumstances has occurred and authorizes a modification of the obligor's child support order.¹³

Mr. S.' child support for T. was set at \$50 per month in 2005. After Ms. F. requested a modification, CSSD calculated Mr. S.' modified child support amount at \$277 per month, based on his then-hourly wage of \$10.50 per hour times 2080 hours per year. This calculation also included a deduction from his income for paying support for a prior child of \$273.66 per month, but the source of that figure is not known.¹⁴

Mr. S.' modified child support should be recalculated. The support amount for December 2007, the month this modification is effective,¹⁵ should be calculated from Mr. S.' 2007 income of \$16,441.22. When the 2007 PFD amount of \$1654 is added to his earnings from employment, it results in total annual income for 2007 of \$18,095.22. This is the correct income figure to use in Mr. S.' modification for the 2007 calculation.

For 2008 and ongoing, Mr. S.' total annual income from his two jobs is \$33,280 per year, as discussed above. Adding the PFD amount of \$1654 results in total annual income of \$34,934. This is the correct income figure to use for calculating Mr. S.' 2008 and ongoing child support amount.

B. Deductions for prior children

Civil Rule 90.3(a)(1)(C) provides that a parent who supports a prior child in the home is entitled to a deduction from the parent's income as though the parent paid child support for that child. Mr. S. asserts he is entitled to a prior child deduction for supporting his child S. in the home, but the evidence as a whole does not corroborate his claim. He testified in his other hearing that S. no longer lives with him and the school records Mr. S. filed indicate S. left and went to California in November 2007.¹⁶ Mr. S. is therefore not entitled to the deduction for supporting a prior child in the home in his child support calculation for T..

Mr. S. is, however, entitled to a deduction for paying support for a prior child through CSSD, as provided for in Civil Rule 90.3(a)(1)(B). Mr. S. has been paying support of \$50 per

¹³ Civil Rule 90.3(h).

¹⁴ Exh. 5 at pg. 6.

¹⁵ The effective date of a modification is the first month after CSSD issues a notice that a petition for modification has been filed. 15 AAC 125.321(d). Here, CSSD issued the notice on November 15, 2007. See Exh. 2.

¹⁶ It is conceivable that S. returned to Alaska after November 2007, but her school records would have had to have reflected a subsequent ASD enrollment in order for Mr. S.' testimony that she left in March 2008 to be credible.

month for S. through CSSD, and effective January 1, 2008, Mr. S. has been ordered to pay \$469 per month for J., a child older than T. He is entitled to these deductions and they should be included in his child support calculation for T. The \$50 per month deduction for S. applies both to the 2007 and 2008 calculations, but the \$469 per month deduction applies only to the 2008 calculation.

Applying these deductions and inserting all of the figures into CSSD's child support calculator¹⁷ results in modified child support amounts as follows: for December 2007, Mr. S. should pay support for T. of \$252 per month;¹⁸ and for January 2008 and ongoing, he should pay support in the amount of \$375 per month.¹⁹ These calculations of Mr. S.' child support obligation are correct because they are based on his total income from all sources, as required by Civil Rule 90.3, and include the appropriate deductions for paying support for prior children.

C. Financial hardship

The next issue in this appeal is whether Mr. S. is entitled to a reduction of the child support amount calculated, pursuant to Civil Rule 90.3(c). This is referred to informally as a hardship request and is based on Mr. S.' testimony that he cannot afford the child support amount calculated.

Child support amounts calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The 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 parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." Civil Rule 90.3(c). If there are "unusual circumstances" in a particular case, this may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[20]

¹⁷ CSSD's website is located at <http://www.childsupport.alaska.gov/> and a link to the child support calculator is on the top of the page and also on the right-hand side of the page.

¹⁸ See Attachment A.

¹⁹ See Attachment B.

²⁰ Civil Rule 90.3(c)(1).

It is necessary to consider all the relevant evidence in order to determine whether the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).²¹

Mr. S.' financial situation is definitely strained at this time, but his bills and expenses are not out of the ordinary. Given the evidence as a whole, his situation does not constitute "unusual circumstances." Mr. S. 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. He is employed in one full-time and one part-time job and he should be able to budget his expenses so that he can handle all of his financial obligations. Mr. S. may have to make some difficult financial adjustments, but simply having monthly living expenses or debts that exceed one's net income does not automatically entitle a parent to a reduction in the child support calculation.²² Mr. S. has a duty to support T., based on his total annual income, and this duty to his child takes priority over other non-support debts and obligations.²³

IV. Conclusion

Mr. S. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, but the evidence as a whole requires that his child support be raised to \$252 for December 2007 and \$375 per month, effective January 1, 2008. Mr. S. is not entitled to the deduction for supporting a prior child in the home, but he is entitled to the deductions for the support he pays for S. and J.

Finally, Mr. S. did not prove by clear and convincing evidence that manifest injustice will result if the child support calculated pursuant to Civil Rule 90.3 is not varied. His modified child support is now correctly calculated and the above figures should be adopted.

V. Child Support Order

- Mr. S. is liable for modified child support in the amount of \$252 for December 2007, and for modified ongoing child support of \$375 per month, effective January 1, 2008, and ongoing;

²¹ See Civil Rule 90.3, Commentary VI.E.1.

²² Civil Rule 90.3, Commentary VI.B.4.

²³ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

- All other provisions of the February 13, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 28th day of July, 2008.

By: By: Signed
Kay L. Howard
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 15th day of August, 2008.

By: By: Signed
Kay L. Howard
Administrative Law Judge

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