

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

IN THE MATTER OF: )

A. W. )

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) OAH No. 08-0096-CSS

) CSSD No. 001148922

**REVISED DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

This matter involves the Obligor A. W.' appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 25, 2008. The Obligee child is J., DOB 0/00/04.

The formal hearing was held on April 15, 2008. Both Mr. W. and the custodian of record, K. J. W., aka K. J. P., appeared in person. Ms. W. is represented by attorney Michelle V. Minor. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 9, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, the calculations in CSSD's Amended Administrative Child Support and Medical Support Order are adjusted as discussed below.

**II. Facts**

**A. History**

On June 29, 2007, Ms. W. applied for child support services on J.'s behalf.<sup>2</sup> On November 19, 2007, CSSD served an Administrative Child and Medical Support Order on Mr. W..<sup>3</sup> He requested an administrative review and provided income information.<sup>4</sup> Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on January 25, 2008, that set Mr. W.' ongoing support at \$557 per month, with arrears of \$3831 for the period from June 2007 through January 2008.<sup>5</sup> Mr. W. filed an appeal and requested a

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<sup>1</sup> This revised decision and order is being issued in response to an August 6, 2008, request for clarification from CSSD, regarding an inconsistency between the introduction and the order section of the decision. This decision clarifies the issue.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exhs. 2-4.

<sup>4</sup> Exhs. 5 & 7.

<sup>5</sup> Exh. 8.

formal hearing on or about February 11, 2008, asserting he and Ms. W. were together until July 2007, and he supports two older children – a son in New York and a daughter in Grenada.<sup>6</sup>

### **B. Material Facts**

The parties are currently married and have one child, J., DOB 00/00/04. They last lived together in July 2007 and are in the process of getting a divorce. After a hearing held on October 3, 2007, Ms. W. was granted interim custody and Mr. W. was allowed visitation two days per week.<sup>7</sup> He paid a total of \$550 toward J.'s childcare expenses in late 2007, which average out to be \$45.83 per month.<sup>8</sup> Also, Mr. W. paid child support directly to Ms. W. in the amounts of \$150 in August 2007, and \$475 in September 2007.<sup>9</sup>

Mr. W. has two children older than J.: K. J., DOB 00/00/92; and L. W., DOB 00/00/99. K. lives in Mr. W.'s home country of Grenada. In March 2003, he was ordered to pay child support on her behalf in the amount of \$100 per month, but as of October 2007, he had arrears of \$3234.50 in that case.<sup>10</sup> Mr. W. claimed he pays support for K., but he did not provide proof of any payments.

Mr. W.'s son, L. used to live in Alaska with his father and Ms. W., but the child returned to the custody of his mother in New York when the parties split up in July 2007.<sup>11</sup> Mr. W. has since begun making payments for L.'s support directly to his mother. CSSD estimated the payments have been approximately \$100 per month.<sup>12</sup>

In 2007, Mr. W. worked for three employers and earned a total of \$39,420.<sup>13</sup>

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>14</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated from his or her "total income from all sources."

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<sup>6</sup> Exh. 10.

<sup>7</sup> Exh. 18 at pg. 13.

<sup>8</sup> Post-Hearing Brief at pg. 1.

<sup>9</sup> Exh. 12.

<sup>10</sup> Exh. 17 at pg. 1.

<sup>11</sup> Exh. B.

<sup>12</sup> Exh. 16.

<sup>13</sup> Exh. 14.

<sup>14</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

Civil Rule 90.3(a)(1)(B) provides that a parent who pays support for a prior child is entitled to a deduction in that amount from the parent's income, so long as the payment has been ordered by a court or administrative agency such as CSSD, and the amount is being paid. Voluntary payments may be allowed an obligor parent pursuant to the "unusual circumstances" provisions of Civil Rule 90.3(c).<sup>15</sup>

In this action establishing a child support amount for J., DOB 8/12/04, CSSD initially calculated Mr. W.'s child support at \$557 per month.<sup>16</sup> This calculation did not include any deduction for the support Mr. W. asserted he pays for his two older children, K. and L. After the hearing, Mr. W. provided a letter from Grenadian officials confirming that he was ordered to pay support on K.'s behalf in the amount of \$100 per month, beginning in March 2003.<sup>17</sup> However, the letter also indicates that as of October 31, 2007, he had arrears of \$3234.50 in that case.<sup>18</sup> Since the order was for only \$100 per month, arrears in excess of \$3,200 suggest that Mr. W. has paid little in the way of child support for K. since the order was entered. Furthermore, since he did not document any payments of support for his daughter, Mr. W. is not entitled to the deduction of \$100 per month, even though he provided a copy of the child support order. Civil Rule 90.3(a)(1)(B) requires that the support amount for the prior child actually must be paid in order for the obligor to get the deduction.

As to his prior child L., Mr. W. is entitled to a deduction for the support he pays to the child's mother, pursuant to the "unusual circumstances" provisions of Civil Rule 90.(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 . . . .<sup>[19]</sup>

Good cause must be proven by clear and convincing evidence that "manifest injustice would result if the support award were not varied." Civil Rule 90.3(c). Given the evidence as a whole, the facts of this case constitute "unusual circumstances" and Mr. W. has proven by clear and

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<sup>15</sup> Civil Rule 90.3, Commentary III.D.

<sup>16</sup> Exh. 9.

<sup>17</sup> Exh. 17 at pg. 1.

<sup>18</sup> *Id.*

<sup>19</sup> Civil Rule 90.3(c)(1).

convincing evidence that manifest justice would result if his child support amount were not varied to reflect the \$100 per month payments he makes on L.'s behalf.<sup>20</sup>

Mr. W.' 2007 child support obligation is determined by inserting Mr. W.' annual income from all sources into CSSD's child support calculator,<sup>21</sup> and including the \$100 per month deduction for the support Mr. W. pays for L. This process results in a child support amount of \$537 per month for one child.<sup>22</sup>

For 2008, the same process is applied, which results in a child support amount of \$546 per month.<sup>23</sup> This calculation is different than the 2007 calculation in that the deduction for childcare payments pursuant to Civil Rule 90.3(a)(1)(D) is not included for 2008. The distinction between the 2007 payments, which were allowed, and the one disallowed payment in January 2008, is that Mr. W. made several payments in the second half of 2007, the same general time period during which he is obligated to pay support. In contrast, there is no evidence that Mr. W. has made any childcare payments since January 2008, so he is not entitled to a childcare deduction in his support obligation for J. for the entire 2008 year.

Mr. W.' child support amounts for 2007 and 2008 are now correct because both calculations are based on his total income from all sources, as required by Civil Rule 90.3, and both include the deduction for paying support for one prior child.

#### **IV. Conclusion**

Mr. W. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. Mathematically the final adjustments are small, but his child support obligation is now correctly calculated and the amounts discussed herein should be adopted, effective August 1, 2007.<sup>24</sup>

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<sup>20</sup> Since these are voluntary payments, Mr. W. may want to send CSSD copies of his receipts on a regular basis in order to establish he has continued the payments in the event a petition for modification of J.'s child support is filed.

<sup>21</sup> 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.

<sup>22</sup> See Attachment A. This calculation also includes a childcare deduction pursuant to Civil Rule 90.3(a)(1)(D) in the amount of \$45.83 per month that reflects the payments Mr. W. made on J.'s behalf. CSSD did not contest him being entitled to the payment for 2007.

<sup>23</sup> See Attachment B.

<sup>24</sup> Ms. W. initially applied for child support services on June 29, 2007, but the parties did not finally separate until sometime in July. They agreed Mr. W.' child support obligation should begin in August 2007.

**V. Child Support Order**

- Mr. W. is liable for child support for J., DOB 00/00/04, in the amount of \$537 per month for the period from August 2007 through December 2007; and \$546 per month for January 2008 through August 2008, and ongoing;
- Mr. W. is entitled to a credit for direct child support paid to J.'s custodian in the amount of \$150 in August 2007, and \$475 in September 2007;
- All other provisions of the January 25, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 11th day of August, 2008.

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 25th day of August, 2008.

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

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