

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

In the Matter of: )  
 )  
C. R. H. ) OAH No. 08-0119-CSS  
 ) CSSD No. 001081821  
\_\_\_\_\_ )

**REVISED DECISION AND ORDER**

**I. Introduction**

C. R. H. is the obligor of record for K. S. (DOB00/00/95). The mother and custodian of record for K. is A. B.

Child Support Services Divisions (“CSSD”) received an electronic review request from the custodian on December 13, 2007.<sup>1</sup> In response to the request, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the obligor on December 26, 2007.<sup>2</sup> On February 19, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order (“modification order”); the modification order increased the monthly child support for obligor’s child from \$914 per month to \$1459 per month.<sup>3</sup> Mr. H. filed his appeal of the CSSD decision to increase the child support on March 4, 2008.<sup>4</sup> With the filing of the appeal, Mr. H. also requested a formal hearing.<sup>5</sup>

The formal hearing in this matter commenced on March 26, 2008, before Administrative Law Judge (“ALJ”) James T. Stanley, with the Office of Administrative Hearings (“OAH”). The hearing was recorded. Mr. H. appeared in person. Ms. B. appeared by telephone. Andrew J. Rawls, Child Support Specialist, appeared in person for CSSD.

Exhibits 1 through 9 were admitted into evidence. The record was closed on April 4, 2008. The proposed decision was distributed on May 12, 2008. On May 21, 2008, Ms. B.

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<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibit 3.

<sup>3</sup> Exhibit 4.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Exhibit 6.

timely filed a proposal for action. The Commissioner of Revenue remanded the case to the ALJ to take additional evidence about the “relative age of children.”<sup>6</sup>

A supplemental hearing was convened before the ALJ on June 25, 2008. Ms. B. and Mr. H. participated by telephone. A.J. Rawls appeared in person for CSSD. The supplemental hearing was recorded.

## **II. Facts<sup>7</sup>**

Mr. H. was employed at the time of the first hearing by W. Construction as an electrician.<sup>8</sup> The evidence shows that in 2007, Mr. H. earned \$127,725.47 and received a permanent fund dividend of \$1654.

Mr. H.’s son, B. S. H. (DOB 00/00/95), from a later relationship, resides with him fifty percent of the time, and with his mother, A. H., the remainder of the time. His son is approximately five months younger than K. Unlike K., B. is not the subject of any child support order. B. is supported by mutual agreement between Ms. H. and Mr. H.

## **III. Discussion**

Mr. H.’s argument on appeal from the modification order had several components. He believes that: (1) \$914 per month is adequate child support to raise K., age twelve at the time of hearing; (2) child support of \$1459 for one child is excessive, and therefore unjust;(3) the income information used by CSSD to calculate his child support is incorrect; (4) the amount of child support calculated by CSSD fails to consider that his son by a *prior* relationship resides with Mr. H.; and (5) Mr. H. is not receiving the proper credit for the medical insurance that he provides for K. Further, Mr. H. makes the general observation that the more he works, the more income he has, and the child support burden increases accordingly.

Ms. B.’s proposal for action registered her disagreement with the application of the “child support statute and calculating child support obligation to K.” Ms. B. alleged that the facts recited in the decision and order were not correct, namely that B. is not a prior child of Mr. H.; rather, B. is a later child, younger than K. Further, she alleged that B. resides with Mr. H. fifty percent of the time, and not all of the time.

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<sup>6</sup> Non-Adoption Option No. 1, exercised June 10, 2008 by the Director of Administrative Services for the Commissioner of Revenue.

<sup>7</sup> The facts stated herein are drawn from the testimony received at the hearing (initial and supplemental), and the exhibits admitted into evidence, unless another source is cited.

<sup>8</sup> Exhibit 8, a notice to withhold for health care coverage, indicates that Mr. H. also worked for W. M. Construction LLC. Mr. H. testified that W.Construction and. W. M Construction were owned by a single entity or person(s).

Child support amounts calculated under Civil Rule 90.3 from Mr. H.'s actual income figures are presumed to be correct. Civil Rule 90.3(a) (1) provides that Mr. H.'s child support amount is to be calculated based on his "total income from all sources." The percentage of income approach used to determine child support has a fair and substantial relationship to the goals of Civil Rule 90.3.<sup>9</sup> Mr. H. may obtain a reduction below the amount calculated, but only if he or she shows that "good cause" exists to support the reduction. To establish good cause, the parent must prove by clear and convincing evidence<sup>10</sup> that "manifest injustice would result if the support award were not varied."<sup>11</sup> Depending upon the facts of a particular case, "good cause" might be established by showing "unusual circumstances."

A child support payment of \$914 per month may in fact be adequate to raise one twelve year old child. However, Alaska case law provides that when an obligor parent experiences an increase in income, the obligor cannot avoid paying additional support merely by showing that the children's needs are being met by an existing child support award.<sup>12</sup> Applied to Mr. H.'s situation, the adequacy of an existing child support order is not an obstacle to raising the amount of child support when the obligor's income increases, as his did from and after 2001, the year in which child support was set at \$914 per month. Mr. H. earned \$77,289 in the year 2000; his income in the year 2000 was used to calculate the amount of child support set in 2001. In 2007, actual income information reveals that Mr. H. earned \$127,725 in 2007 and received a permanent fund dividend of \$1654.

Mr. H. testified under oath at the March 26, 2008, hearing that his son from a prior relationship resides with him, and he provides all financial support for his son. Additionally, the amount of medical insurance credit should have been \$107.25 per month rather than \$97 per month. The proposed decision issued on May 12, 2008 accepted the testimony regarding a prior child in the home which resulted in a child support obligation for K. of \$1157 per month.

The commentary to Civil Rule 90.3 ("commentary") provides that child support payments paid to another person arising from a different case are deductible if: the child support is actually being paid; the payment of child support is required by court or administrative order;

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<sup>9</sup> *Lawson v. Lawson*, 108 P.3d 883(Alaska 2005).

<sup>10</sup> The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

<sup>11</sup> Civil Rule 90.3(c).

<sup>12</sup> *Berkbigler v. Berkbigler*, 921 P.2d 628 (Alaska 1996).

and, the child support being paid must relate to a prior relationship.<sup>13</sup> Mr. H.'s request to modify the existing child support order does not satisfy the foregoing requirements. The critical commentary language which applies to Mr. H.'s request for consideration of the child living in his home is:

A child support order for children of a second marriage should take into account an order to pay support to children of a first marriage, **but not vice versa** (emphasis added).<sup>14</sup>

Applying the rule to Mr. H.'s situation and request, the existence of a "subsequent" child in the obligor's home born *after* the support obligation arose does not provide good cause to vary the child support guidelines.<sup>15</sup>

Testimony at the supplemental hearing of June 25, 2008, supports findings of fact that: B. is younger than K.; Mr. H. provides approximately fifty percent of the support for B.; and, B. resides with Mr. H. fifty percent of the time, rather than all of the time. These "new" facts require recalculation of the amount of child support that Mr. H. should be paying for K. Recalculation based upon all of the information and facts available on June 25, 2008, yields a monthly child support payment of \$1449.

It is undisputed that an ongoing child support obligation of \$1449 per month is a significant sum of money. It is also undisputed that an obligor, such as Mr. H., has a duty to support K., that the amount of support is based upon his income, and that his duty to pay child support takes priority over other debts and obligations. A person who has brought a child into the world simply does not have the same choices he otherwise might have.<sup>16</sup>

If the adjusted annual income of Mr. H. should materially change<sup>17</sup> as a result of fewer overtime hours, injury, or other verifiable reasons, Mr. H. is entitled to expeditiously make application for a change in the child support amount.<sup>18</sup> The effective date for a modified child support order is the first day of the month following the request for a modification, even though

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<sup>13</sup> Section II.D.

<sup>14</sup> Civil Rule 90.3 Commentary, section III.D.

<sup>15</sup> Civil Rule 90.3 Commentary, section VI.B.2.

<sup>16</sup> *See Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

<sup>17</sup> Civil Rule 90.3(h) (1). A material change is presumed if the child support amount calculated pursuant to Civil Rule 90.3 changes more than 15%, up or down.

<sup>18</sup> AS 25.27.190.

the formal hearing may not occur soon after the request.<sup>19</sup> Accordingly, an obligor such as Mr. H. should not be trapped very long by a child support order that no longer reflects his income.

#### **IV. Conclusion**

While the modified child support amount of \$1449 is significant, it does not constitute an unusual circumstance under the facts of this case. Mr. H. did meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order issued February 19, 2008, is incorrect with respect to the medical insurance credit, resulting in a net monthly support obligation of \$1449 versus \$1459. Based upon the best information available at the time of the supplemental hearing, Mr. H.'s modified child support amount should be \$1449 per month, effective January 1, 2008.

#### **V. Child Support Order**

Mr. H. is liable for modified ongoing child support in the amount of \$1449 per month for one child, effective January 1, 2008. All other terms, conditions and requirements of the Modified Administrative Child Support and Medical Support Order issued February 19, 2008, remain unchanged.

Dated this 30<sup>th</sup> day of June, 2008.

*Signed* \_\_\_\_\_  
James T. Stanley  
Administrative Law Judge

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<sup>19</sup> 15 AAC 125.321(d).

**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 6<sup>th</sup> day of August, 2008.

By: Signed  
Signature  
Jerry Burnett  
Name  
Director, Admin Services  
Title

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