

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

IN THE MATTER OF: )

N. N. B. )

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) OAH No. 08-0126-CSS

) CSSD No. 001063259

**DECISION AND ORDER**

**I. Introduction**

The Obligor, N. N. B., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 26, 2008. The Obligee children are D., DOB 0/00/93, and J., DOB 0/00/95.

The hearing was held on April 22, 2008. Both Mr. B. and the Custodian, K. I. B., participated by telephone. David. Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 16, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful deliberation, CSSD correctly calculated Mr. B.’s modified child support amount at \$575 per month.

**II. Facts**

**A. History**

Mr. B.’s child support was set at \$421.06 per month in 2004.<sup>1</sup> Ms. B. requested a modification on December 10, 2007.<sup>2</sup> On December 16, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. B. provided income information.<sup>4</sup> On February 26, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B.’s modified ongoing child support at \$575 per month, effective November 1, 2007.<sup>5</sup> Mr. B. appealed on March 10, 2008, asserting he had just been laid off his job and listing several other financial problems that make it impossible for him to pay

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

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

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5 at pg. 1. This date appears to be in error. The effective date of a modification is the first of the 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 December 16, 2007, so the modification should be effective as of January 1, 2008. *See* Exh. 3.

child support in the amount calculated.<sup>6</sup> Both parties appeared by telephone and presented testimony at the hearing. Mr. B. submitted a 2007 tax return, Alaska fish tickets and bank statements after the hearing.<sup>7</sup>

**B. Material Facts**

Mr. B. and Ms. B. are the parents of D., DOB 0/00/93, and J., DOB 0/00/95. Both parties have subsequent families; the children live with Ms. B.

Mr. B. works primarily as a self-employed carpenter and fisherman. In 2006, Mr. B. reported gross receipts of \$31,866 from his carpentry business and \$33,293 from fishing on the “Foreigner.” After expenses, his net income, as reflected on his 2006 tax return, was \$27,832, plus the PFD, for a total income figure of \$28,939.<sup>8</sup> He did not receive income from wages in 2006.<sup>9</sup>

In 2007, Mr. B. reported gross receipts of \$37,104 for his carpentry work.<sup>10</sup> In addition, he leased the fishing boat “Dutch” and operated it with the assistance of his wife.<sup>11</sup> He received a 1099 form showing his fishing boat proceeds of \$18,843.<sup>12</sup> Mr. B. also worked for another employer in 2007 and reported income from wages from a local construction company in the amount of \$2,491.20.<sup>13</sup> After expenses, Mr. B. reported adjusted gross income of \$26,771.<sup>14</sup> With the addition of the \$1,654 PFD, these figures would total income of \$28,365. Mr. B. indicated he suffered a back injury on the boat in July 2007, but it was not a serious injury – his treatment consisted of chiropractic visits for two months.

Mr. B. testified he has regular monthly expenses of \$1600 for rent; \$485 for a truck payment; \$800-\$1000 for food; \$140 for water and electricity; \$365 for natural gas; and an unknown amount for gasoline, although Mr. B. said it’s high because he commutes into Anchorage from Wasilla. Mr. B.’s wife does not work outside the home.

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<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 8.

<sup>8</sup> Exh. 4 at pg. 4.

<sup>9</sup> *Id.*

<sup>10</sup> Exh. 8 at pgs. 4, 5, 6 & 20.

<sup>11</sup> Mr. B. testified the boat has a crew of four, but he admitted during the hearing that besides him and his wife, the two other crew members were his 6- and 7-year old children.

<sup>12</sup> Exh. 8 at pgs. 7 & 22.

<sup>13</sup> Exh. 8 at pg. 3.

<sup>14</sup> Exh. 8 at pg. 9.

Ms. B. challenged Mr. B.'s testimony about his expenses, claiming that his wife is an illegal alien and does not have a social security number, so she cannot file a tax return. Ms. B. also claimed that the Obligor and his family live in his parent's house, so he does not have a rent payment. Mr. B. was given the opportunity to respond, but he remained quiet and did not contradict Ms. B.'s testimony.

### **III. Discussion**

This appeal raises two issues: whether CSSD correctly calculated Mr. B.'s child support obligation, and whether he is entitled to a reduction in the support amount based on a financial hardship.

#### **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."<sup>15</sup> If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and authorizes a modification of the obligor's child support order.<sup>16</sup>

Civil Rule 90.3 does not have a specific formula for determining the income of a self-employed Obligor, but the Commentary to the Rule does provide this guidance:

Self Employment Income. Income from self-employment, rent, royalties, or joint ownership of a partnership or closely held corporation includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses, investment tax credits, or other business expenses determined by the court to be inappropriate. Expense reimbursements and in-kind payments such as use of a company car, free housing or reimbursed meals should be included as income if the amount is significant and reduces living expenses.<sup>[17]</sup>

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<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> Civil Rule 90.3(h).

<sup>17</sup> Civil Rule 90.3, Commentary III.B.

CSSD initially calculated Mr. B.'s modified child support at \$575 per month for two children, based on his net income of \$27,832, as reported on his 2006 tax return, plus the \$1,654 PFD.<sup>18</sup> He appealed that calculation.

After the hearing, Mr. B. provided his 2007 tax return,<sup>19</sup> from which CSSD calculated a child support amount of \$652 per month for two children.<sup>20</sup> CSSD arrived at this figure by disallowing Mr. B.'s fishing deductions,<sup>21</sup> which it explained this way:

Mr. B. also worked as a commercial fisherman. He received a 1099 indicating his share of the fishing boat proceeds, his crew share, were [sic] \$18,843.00. This is considered his crew share from the fishing boat. Mr. B. then proceeded to deduct numerous business expenses for the fishing boat. CSSD is confused on this point. Either the person who paid Mr. B., via the 1099, owns the boat and therefore he should be entitled to the business expense deductions or Mr. B. made a mistake on his tax returns by taking the business expense deductions. Either way, CSSD used the entire amount of the fishing boat proceeds, per the 1099. When all of these figures are entered on to the CSSD online calculator, it reveals Mr. B. is liable for child support in the amount of \$652 per month for two children . . . .<sup>[22]</sup>

CSSD also added the amount of Mr. B.'s earned income credit ("EIC") back into his income figures.<sup>23</sup>

Notwithstanding CSSD's attempts to calculate Mr. B.'s child support amount, it is not possible to accurately determine his support obligation from his 2007 tax return and supporting documents. This is primarily because, as CSSD suggested, the documents he filed do not explain the lease agreement Mr. B. had with the owner of the "Foreigner" and whether the 1099 form he received was a crew share and reflected all of the money he received for his fishing operations. Also, the fish tickets Mr. B. provided show the boat delivered approximately 97,170 pounds of red salmon to the cannery.<sup>24</sup> There are references in the fish tickets to a price for the reds of \$.65 per pound, so the boat would have received at least \$63,160.50 just for the reds alone. Yet there

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<sup>18</sup> Exh. 6.

<sup>19</sup> Exh. 8.

<sup>20</sup> Exh. 9.

<sup>21</sup> See Exh. 9.

<sup>22</sup> Post-Hearing Brief at pg. 1.

<sup>23</sup> See Exh. 8 at pg. 10, line 66a & Exh. 9, "other nontaxable income" in left-hand column.

<sup>24</sup> Exh. 8 at pgs. 53-79. The other species were not counted for this discussion.

is no explanation how the total funds paid by the cannery were settled as between Mr. B. and the rest of his “crew.” Also, there is some indication that his son K.’s savings account may have been used as a conduit for a significant amount of money in 2007 – almost \$22,000 was deposited and then withdrawn during the months of March, November and December 2007.<sup>25</sup> In and of itself, there is nothing wrong with a child having a large savings account, but all of the funds were withdrawn from this account soon after they were deposited; less than \$25 remained at the end of December 2007.<sup>26</sup>

Since his tax return and bank statements raised more questions than they answered, they are not a reliable source of evidence regarding Mr. B.’s income in 2007. As a result, Mr. B.’s 2006 tax return is the best evidence of his income for child support purposes. CSSD calculated Mr. B.’s modified child support at \$575 per month for two children from his 2006 tax return. This calculation is the most accurate determination of Mr. B.’s ability to pay support, given the state of his 2007 tax return and supporting documents, and it should be adopted as the modified child support amount in his case.

#### **B. Financial Hardship**

The second issue in this appeal is whether Mr. B. is entitled to a “good cause” variance of the child support calculation, pursuant to Civil Rule 90.3(c). 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 . . . .<sup>[27]</sup>

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<sup>25</sup> See Exh. 8 at pgs. 80-87.

<sup>26</sup> Exh. 8 at pg. 82.

<sup>27</sup> 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).<sup>28</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. B. 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. Mr. B.'s situation does not constitute "unusual circumstances."

#### **IV. Conclusion**

Mr. B. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. The calculation of \$575 per month for two children is correct, based on Mr. B.'s 2006 tax return. This figure should be adopted. However, the effective date of the modification should be January 1, 2008, not November 1, 2007, the date shown on the modification order.<sup>29</sup> As discussed above, this appears to be a typographical error or oversight.

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

- Mr. B. is liable for modified child support in the amount of \$575 per month for two children, effective January 1, 2008;
- All other provisions of CSSD's February 26, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 22nd day of August 2008.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>28</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>29</sup> See Exh. 5 at pg. 1.

**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 8th day of September 2008.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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