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

In the Matter of	)	
	)	
T.Q	)	OAH No. 22-0209-CSS
	)	

DECISION AND ORDER

I. Introduction

This case involves the modification of T.Q's child support obligation for B, the daughter he shares with custodial parent N.J. Mr. Q appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (Division) on February 28, 2022. The order set his monthly support obligation for B at $926 effective February 1, 2022.[1] On appeal, Mr. Q does not dispute the accuracy of the calculation of the support obligation under Civil Rule 90.3(a), but requests a variance due to financial hardship and unusual circumstances under Civil Rule 90.3(c).

A telephonic hearing was held in this matter over multiple dates in March and April 2022. Mr. Q and Ms. J represented themselves. The Division was represented by Child Support Specialist Brandi Estes. The Division's support calculation proved accurate, but Mr. Q showed by clear and convincing evidence that manifest injustice would result if his obligation was not reduced by way of a hardship variance.

Based on the evidence and after careful consideration, Mr. Q's ongoing obligation for one child should be set at $400 per month.

II. Facts

A. Relevant factual background[2]

B.Q is 8 years old. Shortly after she was conceived, both of her parents were involved in drug-related criminal activity that resulted in Mr. Q serving approximately six years in jail.[3] Due good performance he was released from probation ahead of schedule in 2020, and has since become a roofer. He shares a home with his partner and her twelve-year-old son, and in August they are expecting a baby. His partner works as a kennel

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1 Ex. 3.

2 Facts are based on testimony given by the parties, as well as hearing expense worksheets submitted into the record.

3 Q. test.

technician; her job does not include health benefits or maternity leave. Their tentative plan for childcare after the baby is born is for her to initially stay home, then they will work opposite shifts if they cannot afford daycare.

Mr. Q and his partner earn $4631 and $2820 per month respectively, for a total net income of $7,451. There is no child support order for his partner's child, nor any other sources of income. Every month the two pay $1,889 towards their mortgage, $1100 in food, $1,399 in utilities, $1,267 in vehicle expenses, including gas, maintenance, insurance, and payments, and $200 for clothes, hygiene and personal expenses. This brings their basic monthly expenses to an average of $5,855. Subtracting their basic household expenses from their monthly income leaves a surplus of approximately $1596, not including consumer debt. Also excluded are the expenses associated with his partner's now weekly pregnancy checkups and ultrasounds, which average over $300.

Sometime after the Mr. Q's incarceration, Ms. J relocated to Washington. For several years she lived with her partner and his family and worked for Employer A. When the COVID-19 pandemic hit, B's school transitioned to online learning, making it more difficult for Ms. J to be on time for her remote shifts, as B often needed attention.[4] She ultimately lost her job in 2020, broke up with her partner, and was asked to move out of the family's home. She and B alternately spend nights on her aunt's couch or in hotels. Her monthly bills consisted of $25 for her portion of a shared phone plan with her parents, $400 for gas, $12.50 for car maintenance, $200 for clothing and personal care and $40 for alcohol and tobacco. She applied for Pandemic Unemployment Assistance and used the $15,000 in relief funds she received in 2021 largely to pay off a backlog of bills. She was also approved for $550 in monthly food stamps.

Ms. J testified that it was difficult to find a job after her position with Employer A ended as many places closed in response to the pandemic. Later, businesses began requiring prospective employees to show proof of being vaccinated against COVID-19 and Ms. J had hesitations. At the time of the final hearing in this matter at the end of April, Ms. J and her partner were expecting a baby in two months. She had just relocated to State A, drawn to a state with reportedly more jobs, a lower cost of living, and the opportunity to stay with

[4] J test.

longtime friends who offered to help her partner find work as a plumber, if he opted to relocate.

III. Discussion

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.[5] 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" minus applicable deductions. Income includes any benefits that would have been available to the family unit should it have remained intact.[6]

A review of the Division's calculation of Mr. Q's support obligation for B vis a vis the paystubs he submitted and his testimony at the hearing do not suggest any errors were committed. The Division relied on his last four consecutive quarter earnings, augmented by a permanent fund dividend, to determine his gross annual income to be $69,060.25.[7] After subtracting monthly allowable deductions for federal income tax, FICA, and unemployment insurance, his adjusted annual income totaled $55,579.81, with 20%, or $11,115.96 available for child support.[8] Divided equally over the year, this becomes a monthly obligation of $926.[9]

B. Variance under Civil Rule 90.3(c)

Mr. Q's argument on appeal is that he is unable to pay the $926 ongoing support obligation for B in addition to the current living expenses of his family. He requests a variance of his ongoing obligations.

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.[10] To establish good cause, the parent must show clear and convincing evidence that manifest injustice would result if the support award were not varied.[11] 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.

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5 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
6 *See* Civil Rule 90.3 Commentary, III. Defining Income.
7 Ex. 3.
8 *Id.*
9 *Id.*
10 *See Willis v. State, Dep't of Revenue, Child Support Enforcement Div.*, 992 P.2d 581 (Alaska 1999).
11 Civil Rule 90.3(c).

Ms. J clearly operates on a limited budget. Since losing her job with Employer A in 2020 she has seemingly survived with the help of family members, pandemic relief funds and public benefits. She credibly testified about the challenges of having an unstable living situation and the difficulty of sharing space with her aunt. Nevertheless, it is unclear why she was not able to find employment after B returned to school, fears of COVID-19 community spread were mitigated, and businesses reopened. Regardless, she explained she hopes to "get back on her feet" in State A, around "positive influences."

Mr. Q's living situation is seemingly more stable, with him and his partner both earning sufficient wages to cover both their basic household expenses and mortgage, with some $1500 remaining. However, in August, if not sooner, Mr. Q's partner will leave her job to give birth to their baby. The monthly household expenses of $5,855 will then be borne entirely by Mr. Q, whose monthly income averages $4,631, leaving the household in a deficit of $1,224. This will continue until his partner can return to work, or he takes on a second job. In the interim, defaulting on their mortgage payments appears to be a very real possibility.

While both the J. and the Q. households are in undeniably difficult financial situations, Mr. Q has shown by clear and convincing evidence that setting his support obligation at $926 as calculated under Civil Rule 90.3(a) would result in manifest injustice. There is little room in his budget for a reduction in expenses, and in the coming month he and his partner are going to have to exercise extreme budgeting to avoid falling increasingly deeper into debt every month. While Ms. J is also in a very hard position, she testified that she is being housed by friends in State A who are generously helping her transition. It is apparently very promising that her partner can find a plumbing job in State A, and then be able to assist with expenses involving her and the baby. Therefore, weighing the situations of both parents and considering the wellbeing of B, Mr. Q's ongoing monthly obligation should be reduced to $400, effective February 1, 2022.

IV. Conclusion

Through evidence presented at the hearing Mr. Q met his high burden of proving that his monthly support amount as calculated under Civil Rule 90.3(a) exceeds his ability to pay and would be manifestly unjust. His request for a variance of that obligation is granted under Civil Rule 90.3(c). Beginning February 1, 2022, and ongoing, Mr. Q's support amount for B is set at

$400 per month.

V. Child Support Order

1. T.Q is liable for child support in the amount of $400 per month for one child effective February 1, 2022, and ongoing.
2. All other terms of the Modified Administrative Child Support and Medical Support Order dated February 28, 2022, remain in full force and effect.

Dated: May 15, 2022.

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 27th day of May, 2022.

By: *Signed*
Danika B. Swanson
Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]