

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

In the matter of:)

D. T. I.)

) OAH No. 08-0142-CSS
) CSSD No. 001058304
)

DECISION AND ORDER

I. Introduction

D. T. I. has appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (“CSSD”) on February 23, 2008.¹ Mr. I., obligor, is the father of J. I. (DOB 00/00/94). J. R. is the custodian of record for J.

The hearing in this matter commenced April 4, 2008. Mr. I. did not attend. Ms. R. attended by telephone. Andrew J. Rawls, Child Support Specialist with CSSD, attended in person. The hearing was recorded. The record was left open until April 14, 2008 to allow Mr. I. an opportunity to present good cause why the hearing should be reopened.² In response to the message left for Mr. I. on April 4, 2008 by the Office of Administrative Hearings (“OAH”), Mr. I. telephoned OAH on April 4, 2008, after the hearing was concluded, and asked that the hearing be re-opened. Mr. I. followed his oral request with a written request on April 8, 2008. For good cause shown, the hearing in this matter was continued until April 21, 2008.

The formal hearing resumed on April 21, 2008. James T. Stanley, Administrative Law Judge for the Alaska Office of Administrative Hearings, conducted the hearing. Mr. I. appeared by telephone. The custodian, J. R., appeared by telephone. Andrew Rawls, Child Support Specialist, appeared on behalf of CSSD. The hearing was recorded. Exhibits 1 through 19 were admitted. The record closed on May 1, 2008.

Having reviewed the record in this case and after due deliberation, Mr. I.’s appeal is denied; he is not entitled to a hardship variance pursuant to Civil Rule 90.3(c) simply because his financial obligations are high.

¹ Exhibit 5.

² 15 AAC 05.030(j).

II. Facts

A. History

Mr. I.'s child support obligation for J. was set at \$283 per month, effective October 1, 2002.³ The custodian requested modification of the child support order on December 7, 2007.⁴ On December 11, 2007, CSSD issued a notice of Petition for Modification of Administrative Support Order to the obligor and custodian.⁵ Mr. I. did not respond and did not provide his financial information. Using California Department of Labor information for the 1st, 2nd, and 3rd quarters of 2007, and extrapolating this information to derive Mr. I.'s income for the 4th quarter, CSSD issued a Modified Administrative Child Support and Medical Support Order on February 23, 2008 which increased child support to \$1114 per month.⁶ Mr. I. filed his appeal and request for a hearing on March 12, 2008.⁷ On February 23, 2008, CSSD calculated Mr. I.'s child support obligation to be \$1114 per month. Mr. I. filed his appeal and request for hearing on March 12, 2008.⁸ Based upon more complete, subsequent information, CSSD calculated on April 23, 2008 that Mr. I.'s child support obligation should be \$923 per month.

B. Material Facts

Mr. I. is the father of three children: J. (DOB 00/00/94); T. H. (DOB 00/00/95); and C. I. (DOB 00/00/05). Only C. resides with Mr. I. and his wife in California. Mr. I. pays child support for T. through CSSD in the amount of \$293 per month.

Mr. I. is employed as a radiation therapist. CSSD has calculated Mr. I.'s annual gross income for 2007 to be \$86,025.64.⁹ Mr. I. claimed that his 2007 gross income was \$81,724.33.¹⁰ CSSD calculated Mr. I.'s adjusted annual income for 2007 to be \$55,403.44.¹¹ Mr. I. calculated his adjusted annual income for 2007 to be \$59,490.97.¹² The variance between the proffered

³ Exhibit 1.

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 7

⁸ Exhibit 7.

⁹ Exhibit 19. This exhibit was attached to CSSD's Submission of Record filed after the conclusion of the hearing. For the record, it is remarked as Exhibit 19. Mr. I.'s stated annual gross income is based upon his 2007 W-2 form and his 2007 Child Support Guidelines Affidavit (Exhibit 11).

¹⁰ Exhibit 12.

¹¹ Exhibit 19.

¹² Exhibit 11.

adjusted annual income figures has several explanations: Mr. I. incorrectly deducted the child support that he pays for T.;¹³ and Mr. I. deducted too little for income tax and FICA.

III. Discussion

The purpose of the hearing was to inquire of Mr. I. and obtain a current picture of his financial situation. Mr. I. candidly described his situation and was examined by CSSD at the hearing. While not articulated in detail, the essence of the Mr. I.'s testimony is that he does not have sufficient income to comfortably support his three children and service all of his other financial obligations without placing a great "strain" upon himself, his spouse, and their young son. Stated differently, if child support is increased from \$283.00 per month for J. to \$923.00 per month, as CSSD presently advocates, Mr. I. argues that he will be saddled with an unreasonable financial hardship.

Child support amounts calculated under Civil Rule 90.3 from Mr. I.'s actual income figures are presumed to be correct. Civil Rule 90.3(a) (1) provides that Mr. I.'s child support amount is to be calculated based on his "total income from all sources." Mr. I. may obtain a reduction below the calculated child support amount, but only if he shows that "good cause" exists to support the reduction. To establish good cause, the parent must prove by clear and convincing evidence¹⁴ that "manifest injustice would result if the support award were not varied."¹⁵ Depending upon the facts of a particular case, "good cause" might be established by showing "unusual circumstances".¹⁶

If the newly calculated child support amount is more or less than 15% different from the child support amount set in the previous child support order, Civil Rule 90.3(h) assumes that a material change in circumstances has occurred and the child support amount may be modified. Considering that child support for J. was set in 2002 at \$283 per month and based on gross income of \$20, 514,¹⁷ a significant increase in child support based upon the best currently available information from all sources is not unfair or unreasonable. The record in this case

¹³ The reason why Mr. I. cannot receive a credit for payment of T.'s child support against his child support obligation for J. is explained later in this decision.

¹⁴ The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

¹⁵ Civil Rule 90.3(c).

¹⁶ Civil Rule 90.3(c) (1).

¹⁷ Exhibit 2, p.1.

clearly shows that Mr. I. has substantial debt, but unless those debts are extraordinary¹⁸ (generally meaning beyond his control); the appropriate amount of child support is presumed to be that amount fixed under the guidelines of Civil Rule 90.3.¹⁹

Mr. I. had monthly household expenses at the time of the hearing of approximately \$7400 per month, and take-home, spendable income of approximately \$4617 per month.²⁰ Put another way, Mr. I.'s share of total expenses (presumed to be \$3700 per month or 50% of household expenses) excluding child support do not exceed his available income of \$4617. When child support for T. of \$293 per month, plus child support for J. of \$923 per month, is added to Mr. I.'s expenses, his monthly obligations total approximately \$4916, a sum almost \$200 more than his monthly net income. Mr. I. and his family remain marginally solvent because the family enjoys two incomes.

Mr. I. is under pressure to manage his expenses carefully; this is not unreasonable. Mr. I. may have a "new" family and household to support, but he cannot undertake new obligations at the expense of his first child.²¹ While Mr. I. cannot spend lavishly or unwisely because his expenses slightly exceed his present income, he has a reasonably good employment history, marketable technical skill, and he has the ability to reorganize his expenditures. To meet his obligations to all of his children, he may need additional or different employment, but Mr. I.'s financial situation does not support a finding of "unusual circumstances".

Mr. I. is not entitled to a credit against child support for J. because he pays child support for T. The commentary to Civil Rule 90.3 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; and the child support being paid is related to a prior relationship.²² Mr. I.'s implied request to modify the new child support order for J. (because he pays child support for T.) does not satisfy the foregoing requirements.

¹⁸ "Extraordinary" means very unusual or remarkable. *The Concise Oxford Dictionary* (10th ed. 1999).

¹⁹ *Birkbigler v. Birkbigler*, 921 P.2d 628 (Alaska 1996).

²⁰ Monthly household expenses include home mortgage payment (\$2800), food, food consumed outside the home, utilities (electricity and natural gas), water, refuse, vehicle installment payments (presently \$900 per month for two vehicles), gasoline, vehicle maintenance, automobile insurance, homeowner's insurance, entertainment, personal care items, installment payments for credit card debt, child care (\$800 per month for C.), and student loan payment. Child support for T. is not included in monthly household expenses.

²¹ *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987) and AS 25.20.030.

²² Civil Rule 90.3 Commentary, section II.D.

The critical commentary language which applies to Mr. I.'s request for consideration of the fact that he pays child support for T. 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).²³

Applying the rule to Mr. I.'s situation and request, the existence of a "subsequent" child for whom he pays child support does not provide good cause to vary the child support guidelines.²⁴

Based on all of the evidence presented, and considering the circumstances of Mr. I., Ms. R., and their child, to the extent that their circumstances are described in the record, I do not find that Mr. I.'s case presents unusual circumstances as contemplated by Civil Rule 90.3(c). Mr. I. has not proven by clear and convincing evidence that manifest injustice will result if the child support amount calculated for J. under Civil Rule 90.3 is not reduced.

IV. Conclusion

Mr. I. did not meet his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order issued February 23, 2008, as modified by CSSD's revised (post-hearing) child support calculation, is incorrect. Based upon the best available information, CSSD correctly calculated Mr. I.'s modified child support.

V. Child Support Order

Mr. I. is liable for modified ongoing child support in the amount of \$923.00 per month for one child, effective January 1, 2008. All other provisions of the Modified Administrative Child Support and Medical Support Order of February 23, 2008 remain in effect.

Dated this 2nd day of May, 2008.

By: Signed _____
James T. Stanley
Administrative Law Judge

²³ Civil Rule 90.3 Commentary, section III.D.

²⁴ Civil Rule 90.3 Commentary, section VI.B.2.

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 19th day of May, 2008.

By: Signed
Signature
James T. Stanley
Name
Administrative Law Judge
Title

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