

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

IN THE MATTER OF:)

J. N. S.)

OAH No. 08-0156-CSS

CSSD No. 001114585

DECISION AND ORDER

I. Introduction

The Obligor, J. N. S., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on February 27, 2008. The Obligee child is J., DOB 0/00/02. The hearing was held on April 8, 2008. Both Mr. S. and the Custodian, M. L. M., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, Mr. S.’ child support should be modified to \$469 per month, effective January 1, 2008.

II. Facts

A. History

Mr. S.’ child support for J. was set at \$324 per month in October 2006 by the undersigned.¹ Mr. S. requested a modification on November 30, 2007.² On December 5, 2007, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. S. provided income information.⁴ On February 27, 2008, CSSD issued a Notice of Denial of Modification Review for the reason that a child support calculation prepared from his actual income did not meet the minimum amount of change that would warrant a modification.⁵ Mr. S. appealed on March 21, 2008, asserting his child support amount is too high and he wants it to be lowered.⁶

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exh. 4.

⁵ Exh. 5.

⁶ Exh. 7.

B. Material Facts

Mr. S. is currently employed by Husky Foods; he earns \$11 per hour working full-time in the company's warehouse.⁷ It is estimated that this job provides Mr. S. with annual income in the approximate amount of \$22,880 (\$11 times 2080 hours). He also has a part-time job doing janitorial work for 20 hours per week at \$10 per hour. His annual income from this second job provides Mr. S. with a total of \$10,400 per year (\$10 times 1040 hours). The total annual income from these two jobs is \$33,280 per year. When this income figure is inserted into CSSD's online child support calculator⁸ and the 2007 PFD amount is added, it results in total annual income of \$34,934, and it yields a child support amount of \$469 per month for one child.⁹

Mr. S. has two children older than J.: S., who is 12 years of age, and K. Mr. S. pays support of \$100 in cash per month for K., but he did not provide any documentation or verification of those payments. He pays \$50 per month for S. through CSSD. Mr. S. testified that S. had lived with him in his home up until about the first week in March 2008, when she went to California to join her mother, who had earlier moved there from Alaska. He also claimed that S. would be returning to Alaska in the summer of 2008 because he was going to be assuming custody of her pursuant to the mother's request and that they had filed documents in court in Alaska to provide for the modification of S.'s custody.

Mr. S.' testimony that S. lived with him until the first week of March 2008 is found not to be credible for the following reasons: Mr. S. participated in a hearing in another child support matter before the undersigned administrative law judge on March 17, 2008.¹⁰ In that hearing he testified his daughter S. was still living with him and on that basis requested an additional deduction from his income for supporting a prior child in the home, pursuant to Civil Rule 90.3(a)(1)(C).

Mr. S. agreed to provide S.'s school records as proof she lived with him, but the Anchorage School District ("ASD") records he submitted actually show that S. was withdrawn from the ASD on November 5, 2007, and that she had gone to the Ceres Unified School District

⁷ Except where indicated, the facts are taken from Mr. S.' hearing testimony.

⁸ 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.

⁹ Exh. 11.

¹⁰ In the Matter of J. N. S, OAH No. 08-0093-CSS.

in Ceres, California.¹¹ Furthermore, S.'s records indicate she lives with her mother; there is no reference to Mr. S. anywhere on S.'s school records.¹²

Both parties provide medical insurance for J. The amount of each party's premiums is currently unknown, so they should provide verifying documents to CSSD as soon as possible. Their caseworker will make a determination of how their premiums will affect Mr. S.' child support obligation.

III. Discussion

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."¹³ 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.¹⁴

Mr. S.' child support was set at \$324 per month in October 2006. In this modification action, CSSD denied Mr. S.' petition for modification because a child support calculation prepared from his actual income did not meet the minimum 15% change that would warrant a modification.¹⁵ However, the evidence now indicates Mr. S. has additional income from a second part-time job that should be included in his total annual income for child support purposes. The total annual income Mr. S. receives from his two jobs is estimated to be \$33,280 per year. When the 2007 PFD amount is added to his earnings from employment, it results in total annual income of \$34,934, which yields a child support amount of \$469 per month for one child.¹⁶ This calculation of Mr. S.' child support obligation is correct because it is based on his total income from all sources, as required by Civil Rule 90.3.

¹¹ Exh. 9 at pg. 3.

¹² *Id.*

¹³ AS 25.27.190(e).

¹⁴ Civil Rule 90.3(h).

¹⁵ Exh. 5.

¹⁶ Exh. 11.

B. Deduction for a prior child

Civil Rule 90.3(a)(1)(C) provides that a parent who supports a prior child in the home is entitled to a deduction from the parent's income as though the parent paid child support for that child. Mr. S. asserts he is entitled to a prior child deduction for supporting his child S. in the home, but the evidence as a whole does not corroborate his testimony. He is thus not entitled to the deduction and his child support obligation for J. should be calculated without it. He is, however, entitled to a deduction for the \$50 per month he pays through CSSD on S.'s behalf and the child support amount discussed in the previous section includes that monthly deduction from his income.¹⁷

C. Financial Hardship

The next issue in this appeal is whether Mr. S. is entitled to a reduction of the child support amount calculated, pursuant to Civil Rule 90.3(c). This is referred to informally as a hardship request, and although it was not discussed at length during Mr. S.' hearing, it should be addressed here because his appeal form stated he could not afford the child support payment.

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^[18]

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).¹⁹

¹⁷ See Exh. 11. Also, it should be noted that in the event Mr. S. is able to adequately document a change in S.'s custody, he should notify CSSD as soon as possible thereafter to determine whether he should petition for another modification.

¹⁸ Civil Rule 90.3(c)(1).

¹⁹ See Civil Rule 90.3, Commentary VI.E.1.

Mr. S.' financial situation is definitely strained at this time, but his bills and expenses are not out of the ordinary. Given the evidence as a whole, his situation does not constitute "unusual circumstances." Mr. S. 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. He is employed in one full-time and one part-time job and he should be able to budget his expenses so that he can handle all of his financial obligations. Mr. S. may have to make some difficult financial adjustments, but simply having monthly living expenses or debts that exceed one's net income does not automatically entitle a parent to a reduction in the child support calculation.²⁰ Mr. S. has a duty to support J., based on his total annual income, and this duty to his child takes priority over other debts and obligations.²¹

D. Medical insurance

The custodian in this case, M. M., stated that she provides medical and dental insurance for J. Mr. S. testified he also pays insurance premiums on the child's behalf. The issue of medical insurance will be handled by the parties' CSSD caseworker based on the information they submit to CSSD from their respective employers and/or insurance providers. Mr. S. is entitled to credits or debits against his child support obligation, depending on the parties' respective insurance payments. He will have to provide CSSD with proof from time to time of the payments he makes,²² and his caseworker will then apply the appropriate credit, which may rise or fall according to the cost of coverage and care.

IV. Conclusion

Mr. S. met his burden of proving that CSSD's Notice of Denial of Modification Review was incorrect, but the evidence as a whole requires that his child support be raised to \$469 per month, not lowered, because his income has increased and he does not support a prior child in the home. Further, Mr. S. did not prove by clear and convincing evidence that manifest injustice will result if the child support calculated pursuant to Civil Rule 90.3 is not varied. His modified child support is now correctly calculated at \$469 per month, and it is effective January 1, 2008.²³ This figure should be adopted.

²⁰ Civil Rule 90.3, Commentary VI.B.4.

²¹ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

²² 15 AAC 125.432(c).

²³ 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 5, 2007. See Exh. 3.

V. Child Support Order

- CSSD's February 27, 2008, Notice of Denial of Modification Review is vacated;
- Mr. S. is liable for modified ongoing child support in the amount of \$469 per month, effective January 1, 2008, and ongoing.

DATED this 28th day of July 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 15th day of August 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

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