

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

IN THE MATTER OF)
)
 K A. U) OAH No. 08-0316-CSS
) CSSD No. 001137387
_____)

CHILD SUPPORT DECISION AND ORDER

I. Introduction

On August 19, 2008, a formal hearing was held to consider the child support obligation of K A. U (Obligor) for the support of his children, C and L (Obligees).¹ Mr. U participated. The Custodian, Q Z, also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. U's appeal of the Division's modification of his child support order for C and L. The Division's order should be affirmed. Under that order, the Division's Modified Administrative Child Support and Medical Support Order on June 6, 2008, Mr. U's modified ongoing child support was set at \$430 per month effective March 1, 2008.

II. Facts

A. History

Mr. U's previous monthly child support obligation was \$158 per month.² The Division reviewed this child support order at Ms. Z's request.³ The Division issued a Notice of Petition for Modification of Administrative Support Order on February 13, 2008.⁴

The Division issued a Modified Administrative Child Support and Medical Support Order on June 6, 2008.⁵ The Division determined that Mr. U's ongoing monthly child support should be increased to \$430 per month. The Division based its calculation of Mr. U's ongoing monthly child support on his 2006 earnings, as reported by his employers.⁶ Mr. U requested a formal hearing.⁷ Prior to the hearing, Mr. U filed additional documentation regarding his

¹ The hearing was held under Alaska Statute 25.27.190.

² Ex. 1.

³ Ex. 3.

⁴ Ex. 4.

⁵ Ex. 6.

⁶ Ex. 7, page 1.

⁷ Ex. 8.

household finances and the adoption status of C.⁸

B. Findings

Based on the evidence in the record, I find that it is more likely than not that the Division's calculations at Ex. 7 are correct. I also find that it is more likely than not that the income that the Division used to calculate Mr. U's modified child support is the best estimate of his present income.

I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. U did not present clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not reduced.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. U, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹ Mr. U did not show that the Division's order is incorrect.

At the hearing, Mr. U admitted that the 2007 annual income amount that the Division used to calculate his modified ongoing support was correct and he agreed that he would probably earn as much in 2008 as he did in 2007.¹⁰

Ongoing child support should be calculated based on Mr. U's estimated future income unless good cause exists to raise child support above or reduce it below the amounts calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹¹

Mr. U earns about \$20,000 per year.¹² Mr. U helps to support three children in his home who are younger than C and L, but the mother of Mr. U's two younger children and his step-daughter, who also lives in the household, earns slightly more than Mr. U.¹³ Their household income is about \$43,000 per year.¹⁴ Mr. U and the mother of his younger children should be able to continue to provide for the children in his household even with the increase in his monthly

⁸ Ex. A.

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Recording of Hearing.

¹¹ Alaska Civil Rule 90.3(c).

¹² Recording of Hearing & Ex. 7.

¹³ Ex. A & Recording of Hearing.

¹⁴ Ex. A & Recording of Hearing.

support for C and L.¹⁵

Mr. U's duty to pay the correct percentage of his income toward the ongoing support of his older children, C and L, takes precedence over his debts and other financial obligations, including his obligation to support his stepchild and his younger children.¹⁶ Under Alaska Civil Rule 90.3(a) Mr. U has an obligation to pay 27% of his adjusted gross income in child support to C and L. Mr. U did not show that it would be unjust to require him to pay \$430 per month in ongoing child support.

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.¹⁷ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.¹⁸ Monthly child support of \$430 would be more than a 15 percent increase from the current order of \$158 per month.

Generally, a new monthly child support amount in a modification action should be effective the month after the parties are served with the petition. This modification should be effective March 1, 2008, because the petition was served in February of 2008.¹⁹

In his request for a formal hearing, Mr. U explained that he was in the process of initiating genetic testing for his paternity of L.²⁰ Prior to the hearing, Mr. U filed a copy of a cultural adoption order and a copy of a completed Alaska Bureau of Vital Statistics form requesting a new birth certificate for the child C because of the cultural adoption.²¹ As discussed at the hearing, Alaska regulations require the Division to change a child support order based on a cultural adoption, but the effective date of the change is the effective date of the new birth certificate.²² The Division checked Alaska Bureau of Vital Statistics records prior to the hearing, and stated that C's birth certificate has not been changed. Mr. U is still listed as C's father on C's current birth certificate.²³ As discussed at the hearing, Mr. U should let his Division case worker

¹⁵ Ex. A & Recording of Hearing.

¹⁶ Alaska Civil Rule 90.3 Commentary VI.B.2.

¹⁷ Alaska Civil Rule 90.3(h)(1).

¹⁸ Alaska Civil Rule 90.3, Commentary X.

¹⁹ Alaska Regulation 15 AAC 125.321.

²⁰ Ex. 8.

²¹ Ex. A.

²² Alaska Regulation 15 AAC 125.845.

²³ Recording of Hearing.

know if a new birth certificate is issued for C or if he initiates disestablishment proceedings for L.

IV. Conclusion

The Division’s Modification of Administrative Support Order issued on June 6, 2008 should be affirmed. This means that Mr. U’s modified ongoing child support obligation for C and L will be \$430 per month, effective March 1, 2008.

V. Child Support Order

The Division’s Modification of Administrative Support Order issued on June 6, 2008 is affirmed.

DATED this 26th day of August, 2008.

By: Signed
Mark T. Handley
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 18th day of September, 2008.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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