

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

IN THE MATTER OF:)

B. E. M.)

) OAH No. 08-0383-CSS

) CSSD No. 001146199

DECISION AND ORDER

I. Introduction and Procedural Background

This child support proceeding was initiated under a Uniform Interstate Family Support Act Petition to establish Obligor B. E. M.'s child support obligation to the obligee child J. B., born 00/00/04.¹ The Custodian of record is E. B. Paternity was established through genetic testing.²

CSSD issued an Administrative Child Support and Medical Support Order on June 20, 2007, which was served on November 3, 2007 (June 2007 Order). The June 2007 order established Mr. M.'s ongoing child support obligation for J. at \$553 per month and arrears from September 1, 2005 through May 31, 2007 in the amount of \$9,171.³

Neither Mr. M. nor the custodian requested an administrative review of the June 2007 order within the time allowed. Subsequently, Mr. M. filed an untimely request for an administrative review in the form of a request for formal hearing.⁴ The matter was remanded upon consent of the parties for CSSD to conduct an administrative review.⁵

CSSD conducted an administrative review which resulted in an Amended Administrative Child Support and Medical Support Order dated June 25, 2008 (June 2008 Order). This order set Mr. M.'s ongoing child support at \$670 per month effective July 1, 2008 and arrears from September 1, 2005 through June 30, 2008 in the amount of \$14,780.⁶ On July 24, 2008, CSSD received Mr. M.'s appeal of the June 2008 Order. Mr. M. believes the June 2008 Order is incorrect because the child support calculation did not take into consideration child support paid for children from a prior relationship, his union dues, and his subsequent biological child who is living with him.

A hearing was held on August 14, 2008 and continued to September 22, 2008. Both Mr. M. and Ms. B. participated telephonically. Andrew Rawls, Child Support Specialist, represented

¹ Exhibit 1.

² Exhibits 2, 3.

³ Exhibits 4, 5.

⁴ Mr. M. filed a handwritten document requesting a formal hearing. Exhibit 7. Because a formal hearing was procedurally unavailable to Mr. M., the document was treated as an untimely request for administrative review.

⁵ Remand Upon Consent Of The Parties dated April 4, 2008.

CSSD. The record remained open to provide Mr. M. with an opportunity to submit evidence in support of his claim that he should receive a deduction for union dues paid and for CSSD to confirm whether Mr. M. was paying his child support to his prior children. The record closed September 26, 2008, without further submission from Mr. M. and upon receipt of a revised child support calculation from CSSD, which included a deduction for Mr. M.'s prior children.⁷ After the hearing, CSSD calculated Mr. M.'s child support to be \$646 per month for one child effective October 1, 2008 and arrears from September 1, 2005 through September 30, 2008 totaling \$11,862.⁸

II. Facts

Mr. M. lives with his wife, her two children and his four month old biological daughter in a home he rents for \$900 per month.⁹ Mr. M. estimates his food and utility expenses are \$610 per month. He owns a vehicle, a 1997 Chrysler Concord, and estimates he spends a total of \$685 per month for maintenance, insurance and gas. He estimates his remaining miscellaneous expenses, including \$480 per month for cigarettes for him and his wife, are approximately \$590 per month. Mr. M. has outstanding credit card and medical debts he believes may total \$1,600, but he is not paying anything on this debt. His wife earns \$800 per month.

Mr. M. works union construction jobs which require he be away from home for extended periods of time which has been hard with a new baby.¹⁰ Until recently he was employed. He voluntarily terminated his employment to spend more time with his new daughter.¹¹ He does not know when he will be returning to work, but considers this a temporary period of unemployment.¹²

Mr. M. pays child support for two children from a prior relationship pursuant to a Kansas court order.¹³ However his actual payments have varied from the ordered \$411 per month. In 2006, his payments averaged \$245.84, and in 2007 his payments averaged \$337.50. At the August 14, 2008 hearing, Mr. M. testified that he had not paid child support in 2008 to his prior children, however, by August 25, 2008, Mr. M. had paid \$1350 in child support.¹⁴

⁶ Exhibits 12, 13.

⁷ Exhibit 19.

⁸ Exhibit 19.

⁹ M. Testimony.

¹⁰ M. Testimony.

¹¹ M. Testimony.

¹² M. Testimony.

¹³ Exhibit 8.

¹⁴ See Submission to Record filed August 19, 2008, and Post-Hearing Brief filed September 24, 2008.

Ms. B. testified regarding her monthly income and expenses. She works as a certified nurse aide earning \$1,200 per month.¹⁵ Ms. B. estimates she and J. spend \$140 per month on food. Their rent and utility expenses are \$793 per month. Her car payments, maintenance, insurance and gas are \$620 per month.¹⁶ She has outstanding medical and consumer debt in excess of \$1,400 which she is paying at a rate of \$65 per month. Other expenses including health and renter's insurance, child care, etc. exceed \$300 per month. Ms. B. works overtime to try and keep up with expenses.¹⁷

Mr. M. did not challenge the income used by CSSD to calculate his child support obligation in the June 2008 Order:

Year	Total Gross Income	Monthly Child Support Obligation After Deductions
2005	\$2,471.11 ¹⁸	\$50 ¹⁹
2006	\$31,053.05 ²⁰	\$376 ²¹
2007	\$42,418.83 ²²	\$504 ²³
2008	\$51,020.96 ²⁴	\$670 ²⁵

Rather, he believes CSSD overstated his child support obligation because:

1. He should receive a deduction for union dues.
2. He should receive a deduction for child support paid for the prior children in 2008.
3. He should be granted a variance because to order him to pay child support in the amount calculated by CSSD would cause a hardship to his current family.

To date, Ms B. has received no support from Mr. M. and would like for him to fulfill his obligation to his son.

¹⁵ B. Testimony.

¹⁶ Ms. B. testified that she owes \$1000 on her vehicle, a 1995 Lumina. Her loan payment is \$150 per month and will be paid off in the next year.

¹⁷ B. Testimony.

¹⁸ Exhibit 13 at 1.

¹⁹ *Id.*

²⁰ Exhibit 13 at 2.

²¹ *Id.* Includes a \$245.84 monthly deduction for child support paid to prior children under a court order.

²² Exhibit 13 at 3.

²³ *Id.* Includes a \$337.50 monthly deduction for child support paid to prior children under a court order.

²⁴ Exhibit 13 at 4.

²⁵ *Id.*

III. Discussion

A parent is obligated both by statute and common law to support his or her children.²⁶ Civil Rule 90.3(a)(1) provides that an Obligor's child support payment is to be calculated based on his or her "total income from all sources" less a limited number of deductions.²⁷ Mr. M., as the person requesting the hearing, has the burden of proving that the actions taken by CSSD are incorrect.²⁸ He does this by pointing to evidence already in the record or by placing evidence in the record sufficient to support his claims.

A. *Union Dues.*

Mandatory deductions such as taxes and union dues are an allowable deduction for purposes of calculating child support.²⁹ Mr. M. is claiming that his child support calculation should include a deduction for union dues. However, he has failed to provide any documentation to substantiate his claim that he pays union dues even though he has had several opportunities to do so. Without objective third party evidence such as a pay stub, a statement from his union, etc., that he pays mandatory union dues Mr. M.'s claim for a deduction is a self serving statement that, without more, is not persuasive evidence that he is entitled to a deduction.

B. *Child Support For Children From A Prior Relationship.*

Child support paid for children from a prior relationship is deductible if three conditions are met:

- a. The child support must be actually paid,
- b. It must be paid pursuant to a court or administrative order, and
- c. It must relate to a prior relationship.³⁰

Here all three conditions have been met. CSSD has confirmed that although Mr. M. has not paid the full amount of the child support ordered by the Kansas court he has paid \$150 per month in 2008. Therefore, he is entitled to a deduction for the amounts actually paid when deducted, child support obligation as of January 1, 2008 and ongoing should be \$646 per month.³¹ Should he stop paying his child support under the Kansas order, then Mr. M. will no longer be entitled to a

²⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁷ Civil Rule 90.3(a)(1); Civil Rule 90.3 Commentary IID.

²⁸ 15 AAC 05.030(h).

²⁹ Civil Rule 90.3(a)(1)(A)(iv).

³⁰ Civil Rule 90.3(a)(1)(C); Civil Rule 90.3 Commentary IID.

³¹ Exhibit 19.

deduction and his failure to pay may constitute a material change in circumstance resulting in a modification of his child support in this proceeding.³²

C. Mr. M. Is Not Entitled To A Variance.

Child support calculated under Civil Rule 90.3 from an obligor's actual income is presumed to be correct. An obligor 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 claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."³³ If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction 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 children³⁴

The obligor has the burden of proving his or her earning capacity and establishing that he or she cannot meet their child support obligation.³⁵ Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. The Obligor 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. M. has testified to a financial situation where his monthly expenses are at least \$2,785 per month excluding child support, and his adjusted annual income, including the 2008 PFD is \$3,228.08 per month. His monthly income exceeds his monthly expenses. The Obligor's expenses are not greater than his net income. Moreover, these figures do not reflect the contribution to the household income by Mr. M.'s wife.³⁶

The crux of Mr. M.'s request for a variance is that because he has voluntarily removed himself from the workplace he may have difficulty providing for those children living with him, two of whom he owes no legal obligation of support and one to whom he does owe a legal obligation of support, but was born after J.. The existence of a "subsequent" child or children in the obligor's

³² Modification of child support orders may be made upon a showing of "good cause and material change in circumstances." AS 25.27.190(e).

³³ Civil Rule 90.3(c).

³⁴ Civil Rule 90.3(c)(1)(A).

³⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 – 1372 (Alaska 1991).

³⁶ "In considering whether substantial hardship to subsequent children exists, ...the court should consider the income, including the potential income, of both parents of the "subsequent" children." Civil Rule 90.3 Commentary, § VI.B.2.

home born *after* the support obligation arose does not usually provide good cause to vary the child support guidelines.³⁷ However, the obligor can establish good cause to vary the child support if he or she can prove, by clear and convincing evidence, that failure to vary the child support award would cause substantial hardship to the subsequent children.

Here, Mr. M. offered as good cause a general assertion that failure to vary his support obligation to J. would cause a substantial hardship to his subsequent child. Mr. M. has quit his job and chosen to take some time off from work so he may spend it with his new child. Any hardship to his subsequent child is a result of his choice to remain temporarily unemployed. Therefore, the hardship can be alleviated by Mr. M. returning to the workplace. J. and Ms. B. should not be “forced to finance” Mr. M.’s life choices.³⁸ Mr. M. has not established by clear and convincing evidence that failure to vary the child support award would cause substantial hardship to his subsequent child and the request for variance should be denied.

Mr. M.’s duty to support J. takes priority over other debts, obligations, and subsequent children.³⁹ J. is entitled to receive child support in an amount commensurate with Mr. M.’s ability to pay, calculated pursuant to Civil Rule 90.3. Thus, in the absence of clear and convincing evidence of manifest injustice, it cannot be concluded that good cause exists to vary Mr. M.’s child support amount calculated under Civil Rule 90.3.

IV. Conclusion

Mr. M. did not meet his burden of proving by clear and convincing evidence that good cause exists to vary his child support amount calculated under Civil Rule 90.3. Mr. M. has not established by a preponderance of the evidence that he is entitled to a deduction for union dues. Mr. M. is entitled to a deduction for child support actually paid to his prior children. His child support obligation as of January 1, 2008 and ongoing should be \$646 per month.⁴⁰ He has not established by a preponderance of the evidence that the amount of child support calculated by CSSD for 2005, 2006, and 2007 as set forth in the Amended Administrative Child Support and Medical Support Order dated June 25, 2008 is incorrect.

³⁷ Civil Rule 90.3 Commentary, § VI.B.2.

³⁸ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987) (Addressing imputation of income to a parent who is voluntarily or unreasonably unemployed or underemployed).

³⁹ *See Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

V. Child Support Order

- Mr. M. is liable for child support for J. B. in the amount of \$50 per month for the period from September 2005 through December 2005; \$376 per month for 2006; \$504 per month for 2007; and \$646 per month for January 2008 through June 2008, and ongoing.
- All other provisions of the Amended Administrative Child Support and Medical, Support Order issued June 25, 2008, remain in full force and effect.

DATED this 15th day of October, 2008.

By: Signed
Rebecca L. Pauli
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 3rd day of November, 2008.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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

⁴⁰ Exhibit 19.