

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

IN THE MATTER OF)	OAH No. 08-0410-CSS
R. D. L.)	CSSD No. 001048181
)	
_____)	

CORRECTED DECISION AND ORDER¹

I. Introduction

On September 30, 2008, a formal hearing was held to consider the child support obligation of R. D. L. (Obligor) for the support of his children, A., C. and T. (Obligees).² Mr. L. appeared. The custodial parent, M. V., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on October 10, 2008.

This case is Mr. L.'s appeal of the Division's upward modification of his child support order. Having reviewed the record in this case and after due deliberation, I conclude that Mr. L.'s modified ongoing child support should be set at \$823.80 per month in order to prevent injustice.

II. Facts

A. History

Mr. L.'s existing monthly child support obligation was \$256 per month. The Division reviewed this child support order at Ms. V.' request. The Division issued a Notice of Petition for Modification on February 29, 2008.

The Division issued a Modification of Administrative Support Order on June 25, 2008. The Division determined that Mr. L.'s ongoing monthly child support should be increased to \$1,597 per month. Mr. L. requested a formal hearing.

¹ In the Matter of R. D. L., Child Support Decision and Order, was adopted and distributed to the parties. On December 9, 2008, the Division filed a motion for reconsideration asking for a correction of a typographical error in the Decision and Order. The Division correctly pointed out that there was a typographical error in the conclusion section on page 5, indicating that the order was for one child rather than three children. Therefore, this corrected decision is issued in place of the original. The correction appears in bold italic type. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² The hearing was held under Alaska Statute 25.27.190.

At the hearing, Mr. L. provided information about his household finances. Mr. L. has five of his children living in his home. He is the only adult living in his home. The mother of his children who are living with Mr. L. does not stay in touch with him and only takes the children about 10% of the time. She does not provide financial support for the children. Mr. L. does not believe that she is working. Mr. L. has to pay for day care for his children in his household when the children are not in school. Mr. L. lives in Bethel, Alaska, which has a relatively high cost of living.³ Mr. L. earns a good income. Over the last four quarters his annualized income was \$80,115.39 per year.⁴

Mr. L. has health problems. He recently had a small stroke. Mr. L.'s employer has been working with him to accommodate his health problems, but Mr. L. feels that he faces some uncertainty about his future employment.⁵

Mr. L. has a total of ten biological children, with three different mothers, that he is supporting, either in his home or through child support orders. In addition to this order for A., C. and T., Mr. L. has another child support order for two children, with a different mother. The five children living in Mr. L.'s household have a different mother than his other five children. The five children living in Mr. L.'s household are all younger than A., C. and T., but one of Mr. L.'s two other children is older than one of the children of this order.⁶

Ms. V. testified at the hearing regarding her household's financial circumstances. Ms. V. lives outside of Anchorage. She is married but her husband does not work and receives disability payments. They receive food stamps and go to the food bank. She works two part-time jobs, but may have to give one of her jobs up due to her own medical problems.⁷

After the hearing, the Division filed new calculations as requested. These calculations are based on Mr. L.'s current income and use a third party custody calculation, which divides the income available for child support evenly between Mr. L.'s children. These calculations result in monthly child support for A., C. and T. of \$823.80, which is three tenths of the standard calculation for ten children using Mr. L.'s current income.⁸ Based on the evidence in the record, I conclude that it is more likely than not that this calculation and the income amounts in this

³ Recording of Hearing –Testimony of Mr. L.

⁴ Ex. 8.

⁵ Recording of Hearing –Testimony of Mr. L.

⁶ Recording of Hearing –Testimony of Mr. L.

⁷ Recording of Hearing –Testimony of Ms. V.

⁸ Ex. 8.

calculation are correct.⁹ I also conclude that Mr. L. has presented clear and convincing evidence that it would be manifestly unjust to increase his ongoing child support obligation for A., C. and T. above that amount.¹⁰ Without this adjustment Mr. L.'s ongoing child support obligation for A., C. and T. would be \$1,597.¹¹

III. Discussion

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹² A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹³ Good cause includes a finding of unusual circumstances.¹⁴

To understand the unusual circumstances of this case, one must consider the full extent of Mr. L.'s obligation to support children of different relationships. Mr. L. has ten children with three different mothers. He supports five young children in his home as a single parent with almost no assistance or financial support from those children's mother. He also has two separate child support orders, including this one.

Alaska Civil Rule 90.3(a)(2) appears to recognize the hard reality that it becomes progressively less just and more counter-productive to attempt to charge a noncustodial parent much more than 33% of his or her adjusted income for ongoing child support. This recognition is reflected in the Rule's reduction of the increased additional support for each child after the third child to a mere 3% of the obligor's adjusted income.

Strict adherence to the support guidelines of Civil Rule 90.3(a) for so many children with the same non-custodial parent and different custodial parents would result in a total support obligation far in excess of anything reasonable or collectable, and would clearly work an injustice to the five children living in Mr. L.'s household.

The oldest three children on a child support order would be entitled to 33% of Mr. L.'s adjusted income, as per Civil Rule 90.3(a). The second set of two children would then get 27% of the 67% that is left. The third set of five children living with Mr. L. would have to get by on the little that remained. Even this complicated and unjust distribution of the available income

⁹ Recording of Hearing & Ex. 8.

¹⁰ Recording of Hearing & Ex. 8.

¹¹ Recording of Hearing & Ex. 5, page 1.

¹² Alaska Civil Rule 90.3(a)(1)

¹³ Alaska Civil Rule 90.3(c).

¹⁴ Civil Rule 90.3(c)(1)(A).

would not quite follow Civil Rule 90.3(a) because one of the children in the second set is older than one of the children in the first set.

To avoid injustice, Mr. L.'s cases and the children in his home should be treated as if they were one family, the way that Civil Rule 90.3(i) instructs for setting child support in third-party custody situations. If all ten children were part of one family, with one custodial parent and one support order, Mr. L.'s obligation would be set at 54% of his adjusted income. I believe that is the correct approach in this case, with that 54% obligation then divided by ten and to establish the amount that would be awarded for each of Mr. L.'s children. I have jurisdiction only over this child support order, but it is to be hoped that Mr. L. will be able to seek a modification of his other order to seek the same or a similar approach in modifying his ongoing child support order for those two children.

In this case even the adjusted ongoing amount, \$823.80, still represents a more than threefold increase from the current order of \$256 per month.

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.¹⁵ 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.¹⁶ Monthly child support of \$823.80 will be much more than a 15 percent increase from the current order of \$256 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.¹⁷ The petition was served in February of 2008, so this modification should be made effective March 1, 2008.

IV. Conclusion

I conclude that the request for modification of Mr. L.'s child support should be granted. I also conclude that Mr. L.'s modified ongoing child support should be set at \$823.80 per month for *three children*, effective March 1, 2008.

V. Child Support Order

The ongoing monthly amount in the Division's Modified Administrative Support and Medical Support Order issued on June 25, 2008 is adjusted as follows; all other provisions of that order remain in effect.

¹⁵ Alaska Civil Rule 90.3(h)(1).

¹⁶ Alaska Civil Rule 90.3, Commentary X.

¹⁷ Alaska Regulation 15 AAC 125.321.

1. Mr. L.'s modified ongoing child support amount will be set at \$823.80 per month, effective March 1, 2008.
2. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for A., C. and T.

DATED this 29th day of December, 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 29th day of December, 2008.

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

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