

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

IN THE MATTER OF:)

R. W. E.)

) OAH No. 08-0426-CSS

) CSSD No. 001151170

DECISION AND ORDER

I. Introduction

The obligor, R. W. E., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 10, 2008. The Obligee child is B., DOB 00/00/98.

The formal hearing was held on September 3, 2008. Both Mr. E. and the custodian, H. E., appeared by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 25, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record as a whole and after careful consideration, Mr. E.'s request for direct payment credits and a hardship variance is denied. His request for consideration of medical insurance credits for 2007 is referred to his caseworker.

II. Facts

A. History

Ms. E. began receiving public assistance benefits on behalf of B. in August 2007.¹ On May 2, 2008, CSSD served an Administrative Child and Medical Support Order on Mr. E.² He requested an administrative review and provided income information.³ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on July 10, 2008, that set Mr. E.'s ongoing support at \$657 per month, with arrears of \$7,827 for the period from July 2007 through July 2008.⁴ Mr. E. filed an appeal and

¹ H. E. testimony. CSSD's records indicate public assistance began in July 2007, but the agency was unsure of the start date and accepted Ms. E.'s testimony that she began receiving benefits in August 2007.

² Exh. 1.

³ Exhs. 2-4.

⁴ Exh. 5.

requested a formal hearing on August 13, 2008, asserting primarily that he had helped Ms. E. and B. during the period of time CSSD charged him with child support.⁵

B. Material Facts

R. and H. E. ended their marriage in 2007 and subsequently filed a petition for dissolution in the Superior Court. On June 15, 2007, Mr. E. vacated the family home and moved to his mother's house, where he rented and lived in her Class A motor home. The last mortgage payment he made on the marital home was in May 2007.⁶

Ms. E. and B. stayed in the marital home after Mr. E. left. Ms. E. paid the utilities on the house and remained there until it was foreclosed on February 2, 2008. Also during this time, Mr. E. refinanced Ms. E.'s vehicle, paid other bills for her, and provided health insurance for her and B. through his employment.

On August 7, 2008, the Superior Court issued a Decree of Dissolution of Marriage in the parties' case, which included an order for Mr. E. to pay child support as of June 15, 2008, in the amount of \$709.24 per month, minus a health insurance adjustment of \$134, for a total monthly child support payment of \$575.24.⁷

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).⁹ In this case, public assistance began to be paid in August 2007, so that is the first month Mr. E. is obligated to pay support in this administrative child support case.

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," minus mandatory deductions. CSSD's Amended Administrative Child Support and Medical Support Order calculated Mr. E.'s child support at \$538 per month for 2007 and \$657 per month for 2008.¹⁰ At the formal hearing,

⁵ Exh. 6.

⁶ Ms. E. testified Mr. E. paid the mortgage through May 2008, but that date must be incorrect, as the home was foreclosed on February 2, 2008. Mr. E.'s testimony that he paid the mortgage through May 2007 appears to be correct, and is most consistent with the other facts in this appeal.

⁷ Received by the OAH on September 5, 2008.

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ 15 AAC 125.105(a)(1)-(2).

¹⁰ Exh. 5.

CSSD indicated the agency would agree to use the court's child support calculation instead of CSSD's calculation for the first half of 2008. The parties did not object, nor did either one of them challenge CSSD's child support calculation of \$538 per month for 2007.

Mr. E.'s issues in this appeal primarily involve a request for health insurance credit and for direct payment credits for the support he provided to Ms. E. and B. while they were living in the marital home after he moved out. He is also requesting a hardship variance under Civil Rule 90.3(c).

There does not appear to be any dispute as to whether Mr. E. is entitled to a credit for health insurance he provides for B. The court granted him a credit and CSSD stated at the hearing that his caseworker will make the appropriate adjustment in his 2007 child support amount upon receiving confirming documentation from his employer or insurance provider. In the event that credit is delayed, Mr. E. should contact his caseworker for information.

As to Mr. E.'s request for direct payment credits, CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.¹¹ Credit is generally not given for gifts made to the child(ren) by the obligor.¹²

Mr. E. is not entitled to a credit from his child support obligation for allowing Ms. E. and B. to live in the family home and pay only the utilities. Although they lived there rent-free, Mr. E. was not making house payments, either. Rather, Mr. E. himself stopped making mortgage payments on the home in May 2007 and allowed it to go into foreclosure in early 2008. Therefore, since he had no direct mortgage costs during the period of time Ms. E. and B. lived in the home, he should not get a credit for it.

Mr. E. is also not entitled to a credit for paying Ms. E.'s bills and refinancing her vehicle. Those financial arrangements should have been accounted for in the E.s' dissolution, not in Mr. E.'s child support obligation for B. Since Mr. E. did not make direct child support payments to Ms. E., he is not entitled to a credit against his support obligation for bills he paid on Ms. E.'s behalf.

¹¹ AS 25.27.020(b).

Finally, Mr. E. has requested a hardship or “good cause” reduction in his child support obligation, pursuant to Civil Rule 90.3(c). Child support determinations 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^[13]

It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level – either higher or lower – than provided under the schedule in Civil Rule 90.3(a).¹⁴

Mr. E. submitted a list of his current monthly expenses.¹⁵ Other than his vehicle payments – \$488.54 per month on a 2004 Ford 350 and \$200 per month on a 2006 Kawasaki, and their insurance costs – Mr. E.’s expenses appear to be relatively standard.

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. E. 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. E.’s financial situation may be strained at this time because CSSD is collecting his monthly support amount plus a portion of his arrears every month, but his other bills and expenses are not out of the ordinary and he is employed in a full-time job. Thus, since his overall financial obligations are not excessive, Mr. E.’s financial situation does not constitute “unusual circumstances” pursuant to Civil Rule 90.3(c) such that his child support calculated under the Rule should be lowered.

¹² *CSSD v. Campbell*, 931 P.2d 416 (Alaska 1997).

¹³ Civil Rule 90.3(c)(1).

¹⁴ *See* Civil Rule 90.3, Commentary VI.E.1.

IV. Conclusion

Mr. E. did not meet his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. He is not entitled to direct payment credits against his support obligation. CSSD correctly calculated his 2007 child support based on his annual income, and his caseworker will make the necessary adjustments for his medical insurance credit. The 2007 child support obligation began in August 2007, not July 2007, as CSSD originally determined. CSSD adopted the Superior Court's calculations for the first half of 2008, and absent any objection by the parties, these figures should be adopted. The court order became effective as of June 2008, and will dictate Mr. E.'s child support obligation in the future.

V. Child Support Order

- Mr. E. is liable for child support for B. in the amount of \$538 per month for the period from August 2007 through December 2007; and \$575.24 per month from January 2008 through May 2008 (this amount already includes a medical insurance credit calculated by the court of \$134 per month);
- CSSD should determine the amount of Mr. E.'s medical insurance credit for 2007;
- Ongoing child support has been determined by the court as of June 2008;
- All other provisions of the July 10, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 22nd day of October, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁵ Exh. 8.

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 12th day of November, 2008.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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