

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

IN THE MATTER OF:)

T. K. T., JR.)

OAH No. 08-0568-CSS

CSSD No. 001062181

DECISION AND ORDER

I. Introduction

The Obligor, T. K. T., Jr., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on September 11, 2008. The Obligee child is K., DOB 00/00/95.

The hearing was held on November 12, 2008. Mr. T. appeared in person; the custodian, L. L. N., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. Record closure was scheduled for November 23, 2008, but CSSD did not submit its Post Hearing Brief until December 2, 2008, along with a motion to accept a late filed brief. The motion was granted and record closure occurred on December 2, 2008.

Based on the record and after careful consideration, Mr. T.’ modified ongoing child support is set at \$680 per month for one child, effective July 1, 2008.

II. Facts

A. Procedural history

Mr. T.’ child support obligation for K. was set at \$355 per month in September 2006.¹ Ms. N. requested a modification on June 10, 2008.² On June 23, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. T. did not provide financial information as requested by CSSD.⁴ On September 11, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T.’ modified ongoing

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1.

child support at \$637 per month, effective July 1, 2008.⁵ Mr. T. appealed on October 15, 2008, asserting he pays support for another child and he cannot afford to pay the amount calculated.⁶

B. Material facts

Mr. T. and Ms. N. are the parents of K., DOB 00/00/95. Ms. N. lives out of state and has primary custody of the child. Mr. T. pays \$374 per month to support a younger child.

Mr. T. has been employed as the assistant manager of a local gas station since December 2005. He previously earned \$11.50 per hour, but was promoted in October 2007 and is now a salaried manager. In addition to his salary he receives a small bonus every trimester, but Mr. T. does not know how much each bonus will be. He estimated his total salary at about \$46,000 per year. This is consistent with the income information that was provided by the Alaska Department of Labor and Workforce Development. Those records indicate Mr. T. received \$23,184.44 during the first two quarters of 2008.⁷

By necessity, Mr. T. has significantly reduced his living expenses. He currently lives in his sister's garage and pays \$200 per month rent. He takes his meals with her as well, and tries to give her up to \$75 per month to contribute to the food expense. He pays \$200 per month for a vehicle payment on a 2002 Pontiac Sunfire, a four cylinder sedan. Mr. T. pays car insurance of \$306 per month and storage of \$109, plus fuel expenses of \$160 per month. He does not have any credit card payments.

The custodian was divorced in September 2008. In addition to the obligee, she has a four year-old daughter named E. in the home. The custodian earns \$2,500 per month as a human resources administrator, a position she has held since February 2008. Her expenses total approximately \$2,373 per month, including \$165 per month for braces and medications for K. Her husband previously was providing K.'s medical insurance, but apparently has not been since their divorce.

III. Discussion

Mr. T.' appeal raises two issues: the correct level of income for the child support calculation; and whether he is entitled to a reduction in his child support based on a financial hardship.

⁵ Exh. 4.

⁶ Exh. 5.

⁷ Exh. 7 at pg. 1.

A. Income

A parent is obligated both by statute and at common law to support his or her children.⁸ 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."⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred.

Mr. T. has been paying child support for K. of \$355 per month since September 2006. After the modification request was received in June 2008, CSSD calculated his modified child support at \$637 per month, based on total income earnings of \$46,368.88, which CSSD had estimated from his total income for the first half of 2008.¹⁰

During the hearing Mr. T. provided more current income information. He submitted his pay stubs for the second half of 2008. The final one, dated November 2, 2008, indicates he earns \$896.90 per week, and that in addition to the incentive plan total of \$2,687.50, Mr. T.' year-to-date gross income was \$42,829.16.¹¹ After the hearing, CSSD used the \$896.90 per week figure to estimate Mr. T.' total 2008 earnings at \$50,452.81. Adding the 2008 PFD of \$2,069 results in a total income figure of \$52,521.81.¹² From this figure, CSSD calculated Mr. T.' child support at \$680 per month.¹³

B. Financial Hardship

The second issue in this appeal is whether Mr. T. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule Civil Rule 90.3(c). CSSD correctly calculated Mr. T.' child support at \$680 per month, based on his total projected income for 2008. It is from this calculation that Mr. T.' request for a variance based on financial hardship should be considered.

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

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

⁹ AS 25.27.190(e).

¹⁰ Exh. 4 at pg. 6.

¹¹ Exh. 9.

¹² Exh. 10.

¹³ Exh. 10.

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). The presence of “unusual circumstances” in a particular case 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^[14]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).¹⁵

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. T. 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. T.’ financial situation is strained because he pays support for a younger child in addition to K. Now that this decision has been issued, Mr. T. should be able to have his other support order recalculated to include this support obligation for K. as a deduction, pursuant to Civil Rule 90.3(a)(1)(B). This should reduce his total child support obligation somewhat. But even if it does not, 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 calculated pursuant to Civil Rule 90.3. Mr. T.’ financial obligations are minimal, so there doesn’t appear to be much room in his budget for tightening his belt, so to speak. He may have to increase his hours at work or even find a second job, but Mr. T.’ situation does not constitute “unusual circumstances.”

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. T.’ child support amount.

IV. Conclusion

Mr. T. did not meet his burden of proving that CSSD’s determination of his child support obligation was incorrect in the Modified Administrative Child Support and Medical Support

¹⁴ Civil Rule 90.3(c)(1).

¹⁵ See Civil Rule 90.3, Commentary VI.E.1.

Order. His modified child support, effective July 1, 2008, is correctly calculated at \$680 per month and should be adopted. CSSD will be making whatever adjustments are necessary in the child support amount for the medical insurance credit.

V. Child Support Order

- Mr. T. is liable for modified child support in the amount of \$680 per month, effective July 1, 2008, and ongoing;
- All other provisions of CSSD's September 11, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 13th day of March, 2009.

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 31st day of March, 2009.

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

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