

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

IN THE MATTER OF:)	
)	OAH No. 08-0599-CSS
C. C. B.)	CSSD No. 001144703
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, C. C. B., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on October 22, 2008. The Obligee child is J., DOB 00/00/06.

The hearing was held on November 25, 2008. Both Mr. B. and the custodian, A. L. H., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on December 2, 2008.

Based on the record and after due deliberation, Mr. B.’ child support is modified to \$754 per month for one child, effective August 1, 2008. The obligor’s claim of financial hardship is denied.

II. Facts

A. Background

Mr. B.’ child support obligation for J. was set at \$452 per month in March 2007.¹ Ms. H. requested a modification on June 24, 2008.² On July 1, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ CSSD did not receive financial information from Mr. B.⁴ On October 22, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his ongoing child support to \$783 per month,

¹ Exh. 1.

² Exh. 3.

³ Exh. 4.

⁴ Pre-hearing brief at pg. 1.

effective July 1, 2008.⁵ Mr. B. appealed on October 30, 2008, asserting primarily that he cannot afford the modified child support amount that CSSD calculated.⁶

B. Material Facts

Mr. B. has been employed by ASRC Energy Services on the North Slope for two years.⁷ He builds scaffolding at the Kuparek site and earns \$23.50 per hour, plus time-and-a-half for overtime. His paystub dated for the work period ending October 12, 2008, shows year-to-date income of \$53,332.64.⁸

Mr. B. has a significant amount of financial obligations. He reported regular monthly expenses of \$4,980.80, which includes \$800 for rent; \$550 for food; \$415 for utilities; \$55 for cable service; \$78.15 for a cellular phone; \$460 for the payment on a 2001 Ford F-250 truck; \$310.65 for the payment on a 2004 Ford Explorer; \$150 for vehicle maintenance; \$300 for gasoline; \$480 for vehicle insurance;⁹ \$75 for entertainment; \$75-\$100 for personal care items; \$150 for alcohol and or tobacco; \$200-\$400 for monthly blood tests; and \$542 for the minimum payments on six credit cards with a total amount owing of \$17,160.81.¹⁰ Mr. B. has been attempting to sell his Ford F-250, but he owes more than its Blue Book value, so that effort has been unsuccessful so far.

Mr. B. lives with a girlfriend who shares rent, food and utility expenses. When the obligor is at work, she drives the Ford Explorer and buys her own gasoline for it. She also has a child in their home but Mr. B. does not contribute to the child's support financially, other than occasional babysitting.

Ms. H. is a certified medical assistant, but she is currently working as a barista for a local espresso company so she can spend as much time as possible at home with J. while he is still very young. Ms. H. earns \$730 per month after deductions, plus tips. She also receives food stamps valued at \$180 per month. Ms. H. lives in a one-bedroom apartment because she cannot

⁵ Exh. 5. The effective date of a modification is the first month after CSSD issues the notice that a petition for modification has been filed. 15 AAC 125.321(d). In this case, the notice was issued on July 1, 2008, yet CSSD's modification order also set July 1st as the effective date. CSSD subsequently realized its mistake and said in its pre-hearing brief that the effective date of the modification should be August 1, 2008.

⁶ Exh. 7.

⁷ Except where otherwise stated, the facts are taken from the parties' testimony.

⁸ Exh. 8.

⁹ Mr. B. is required to purchase SR-22 insurance. He pays \$720 per month for four months, then nothing for two months. Thus, $\$720 \times 4 = \$2880 \div 6 = \$480$ per month for insurance.

¹⁰ Exh. 10.

afford to rent a two-bedroom unit. Her parents provide child care for J. and she gives them \$40-\$60 per month for his food. Ms. H.'s regular monthly expenses include \$500 for rent; \$300 for food; \$44 for cable and cell phone; \$120 for gasoline; \$80 for vehicle maintenance and insurance;¹¹ \$50 for entertainment and \$50-\$75 for personal care items. Ms. H. does not have any credit card debt but she has a \$3,000 educational loan outstanding and plans to go back to work as a medical assistant when J. is a little older.

III. Discussion

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹² If the newly calculated child support amount is more than 15% different than the previous order, the Rule assumes a material change in circumstances has occurred and the support amount may be modified.¹³

Mr. B.' child support was set at \$452 per month in March 2007. In response to the petition for modification, CSSD used Alaska Department of Labor and Workforce Development information to estimate his income at \$58,925, and from that figure modified Mr. B.' child support to \$783 per month.¹⁴

Before the hearing, Mr. B. filed a copy of his October 12, 2008, paystub, which CSSD used to estimate his total earnings for 2008 at \$60,837.30.¹⁵ CSSD gave Mr. B. a reduction of \$253.97 per month for his retirement contribution.¹⁶ From this new annual earnings figure, CSSD calculated a modified child support amount of \$754 per month.¹⁷

CSSD's calculation is correct on its face and Mr. B. did not contest the calculation at the hearing. Rather, he stated that he cannot afford the modified child support amount and requested a variance due to financial hardship. Mr. B. stated he no longer receives the overtime work that he formerly had.

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

¹¹ Her 1995 VW Jetta is paid for but needs some work, most of which her father will perform.

¹² AS 25.27.190(e).

¹³ Civil Rule 90.3(h).

¹⁴ Exh. 6.

¹⁵ Exh. 9.

¹⁶ *Id.*

¹⁷ Exh. 9.

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.”¹⁸ 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^[19]

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 for under the schedule in Civil Rule 90.3(a).²⁰

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. B. did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. There are no “unusual circumstances” present to warrant varying his child support calculated under Civil Rule 90.3 for J.

Mr. B. believes he is incapable of meeting the child support obligation because his income is not sufficient to meet all of his financial obligations. Mr. B.’ stated bills seem very high, considering his income.²¹ He has a significant amount of consumer debt, but higher monthly living expenses or debts do not automatically entitle him to a reduction in the child support calculation. Mr. B. may have to make difficult budgeting decisions in light of his child support obligation.

To lower the child support amount would in essence mean that J. is financing Mr. B.’ lifestyle and financial decisions, which is an unfair result for the child. A person who has brought a child into the world does not have the freedom to make life choices that deprive the child of support.²² By reducing just some of his consumer debt, in particular his truck payment,

¹⁸ Civil Rule 90.3(c).

¹⁹ Civil Rule 90.3(c)(1).

²⁰ See Civil Rule 90.3, Commentary VI.E.1.

²¹ Even without a child support obligation, a person earning Mr. B.’ income would likely get into financial difficulties with all of his bills. See Exh. 10.

²² See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

Mr. B. could easily afford the increase in his support obligation. But even if his living expenses exceed his net income, Mr. B.' child support should not be lowered. The obligor has a duty to support J., and this duty takes priority over other debts and obligations. J. is entitled to receive child support in an amount commensurate with Mr. B.' ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. B.' 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.

IV. Conclusion

Mr. B. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. CSSD correctly calculated his modified child support at \$754 per month, which should be adopted.

V. Child Support Order

- Mr. B. is liable for modified ongoing child support in the amount of \$754 per month, effective August 1, 2008;
- All other provisions of CSSD's October 22, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 20th 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 6th day of April, 2009.

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

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