

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

IN THE MATTER OF: )

M. A. R. )

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OAH No. 09-0102-CSS

CSSD No. 001124832

**DECISION AND ORDER**

**I. Introduction**

On February 23, 2009, CSSD filed a Motion for Summary Adjudication arguing that there is no factual dispute in Mr. R.'s case and that the agency's denial of his petition for modification should be affirmed. Oral argument on the motion was held on March 10, 2009 and on March 23, 2009, CSSD's motion was denied.

A formal hearing was held on March 31, 2009. Both Mr. R. and the custodian, B. L. W., participated by telephone. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The obligee children are M., DOB 00/00/02, and A., DOB 00/00/03.

Based on the record as a whole, and after careful consideration, Mr. R.'s child support is modified to \$115 per month for two children, effective September 1, 2008,<sup>1</sup> and further modified to \$209 per month, effective January 1, 2009, and ongoing.

**II. Facts**

**A. Proceedings**

Mr. R.'s child support obligation was set at \$341 per month for two children in February 2008.<sup>2</sup> Since that date, Mr. R. has made several petitions to both the court and CSSD for modification of his support obligation. Those proceedings are discussed in the Decision and Order Denying Motion for Summary Adjudication, issued on March 23, 2009.

On August 19, 2008, Mr. R. filed the latest of several petitions for modification of the \$341 per month child support order.<sup>3</sup> CSSD issued a Notice of Petition for Modification of

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<sup>1</sup> 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 August 25, 2008, so the modification is effective as of September 1, 2008.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 4 at pg. 1.

Administrative Support Order on August 25, 2008.<sup>4</sup> On January 12, 2009, CSSD denied the petition<sup>5</sup> and Mr. R. appealed to the Office of Administrative Hearings (OAH) on February 5, 2009.<sup>6</sup>

**B. Material Facts**

Mr. R. has four children.<sup>7</sup> The oldest is B., but he does not pay child support for her because he does not know her whereabouts nor does he have any contact with the child or her custodian. His three other children are N., DOB 00/00/01, M., DOB 00/00/02, and A., DOB 00/00/03.<sup>8</sup> Mr. R. is paying the arrears on a \$50 per month order for N. In addition, N. spends three nights every weekend with the obligor and he takes her to school on Monday mornings. M. and A. are the children of this order. They live out of state with their mother. Mr. R. is entitled to visitation with them, but he cannot afford the transportation costs on a regular basis.

The Alaska Department of Labor and Workforce Development indicates that Mr. R.'s employers paid him \$5,505.24 during 2008, and he received unemployment benefits of \$632.40 during the year.<sup>9</sup> Because Mr. R. was incarcerated recently, he was not eligible for the 2008 Permanent Fund dividend (PFD) and also it appears he will not be eligible for the 2009 dividend.<sup>10</sup> CSSD inserted Mr. R.'s total income from 2008 into the online child support calculator and the result is a support amount of \$115 per month.<sup>11</sup>

Mr. R.'s current employer is ABM Janitorial Services. The payroll manager there reported that the obligor receives \$9.00 per hour for a 27.5 hour week that lasts from Sunday through Thursday.<sup>12</sup> Mr. R. began working there on January 25, 2009, but after working for less than one month, he slipped on the ice and broke his jaw on February 19, 2009. Mr. R. was unable to work from the day to the accident until April 1, 2009. His medical bills, which exceeded \$29,000, were not covered by insurance. CSSD estimated Mr. R.'s total income at

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<sup>4</sup> Exh. 4 at pg. 2.

<sup>5</sup> Exh. 7.

<sup>6</sup> Exh. 8.

<sup>7</sup> Unless otherwise stated, the facts are taken from the testimony of Mr. R. and Ms. W.

<sup>8</sup> Obligor's Exh. A.

<sup>9</sup> CSSD's Submission to Record at pg. 1.

<sup>10</sup> *Id.*

<sup>11</sup> Exh. 10.

<sup>12</sup> Exh. 11.

\$10,952.50 for 2009. This calculation results in a child support amount of \$209 per month for two children.<sup>13</sup>

Ms. W.'s household consists of herself and M. and A. The children attend school and Ms. W. is employed but she did not discuss her work. The custodian stated she has seen little child support from Mr. R., so she doesn't plan on it or expect it. The last time she received any support was in December 2008, when CSSD garnished a total of \$11 from his unemployment benefits.

### **III. Discussion**

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>14</sup> 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.<sup>15</sup>

CSSD initially denied Mr. R.'s petition for modification but after the hearing the division prepared new calculations, as discussed above. These calculations – \$115 per month for 2008 and \$209 per month for 2009 – are based on Mr. R.'s actual 2008 income and CSSD's estimate of his 2009 income and they are correct determinations.

The other issue in this appeal is whether Mr. R. is entitled to a "good cause" variance of the child support calculation, pursuant to Civil Rule 90.3(c). This is also referred to informally as a hardship request and is based on Mr. R.'s testimony that he cannot afford the child support amount calculated.

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."<sup>16</sup> The presence of "unusual circumstances" in a particular case may be sufficient to establish "good cause" for a variation in the support award:

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<sup>13</sup> Exh. 12.  
<sup>14</sup> AS 25.27.190(e).  
<sup>15</sup> Civil Rule 90.3(h).  
<sup>16</sup> Civil Rule 90.3(c).

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 . . . .<sup>[17]</sup>

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).<sup>18</sup>

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. R. 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. Mr. R. has a duty to support M. and A., and this duty takes priority over other debts and obligations. The children are entitled to receive child support in an amount that accurately reflects Mr. R.'s ability to pay, as calculated pursuant to Civil Rule 90.3.

On the surface, Mr. R.'s financial situation appears to be in dreadful shape. He has a significant amount of debt, most of it from unpaid medical bills. But Mr. R. is also capable of working another job; he has had more than one job at a time in the past.

The modification was granted in this case primarily because of two factors – Mr. R.'s incarceration in 2008 and his accident and broken jaw in 2009. Hopefully with this reduction in his child support amount his ability to pay will be more realistic and Ms. W. will actually receive more support from Mr. R. But the law considers Mr. R.'s child support obligation to be his most important financial responsibility. He testified that he wants to get his own place but he may not be able to do that in the short term.

#### **IV. Conclusion**

Mr. R. met his burden of proving by a preponderance of the evidence that he has had a material change in circumstances such that his child support obligation for M. and A. should be modified. CSSD correctly calculated his modified child support amount at \$115 per month for 2008 and \$209 per month for 2009 and these figures should be adopted. Mr. R. did not prove that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied.

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<sup>17</sup> Civil Rule 90.3(c)(1).

<sup>18</sup> See Civil Rule 90.3, Commentary VI.E.1.

**V. Child Support Order**

- Mr. R.'s child support obligation for M. and A. is modified to \$115 per month, effective September 1, 2008, and further modified to \$209 per month, effective January 1, 2009.

DATED this 2nd day of June, 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 19th day of June, 2009.

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

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