

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

IN THE MATTER OF)
)
 Y. D.) Case No. OAH-09-0105-CSS
) CSSD Case No. 001153335
 _____)

DECISION & ORDER

I. Introduction

The obligor, Y. D., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 29, 2009. A formal hearing was held on March 16, 2009. Ms. D. appeared by telephone, as did the custodian of record, S. V. Andrew Rawls represented CSSD. The child is J. C. (DOB 00/00/1991).

Arrears are set at \$50 per month for the period from January 1, 2007 through January 31, 2009. Ongoing support is set at \$50 per month for one child, effective February 1, 2009.

II. Facts

Ms. D. has at least three children from her marriage with her ex-husband R. C.¹ The younger two children, aged 11 and 13, live with Ms. D. in Anchorage. Seventeen-year-old J., the child in this case, lives in Florida with Mr. C.'s mother, S. V. Although Ms. D. and Mr. C. are divorced, Ms. V. and Ms. D. continue to have a good relationship.

This case arises from a Uniform Interstate Family Support Act (UIFSA) petition from the State of Florida, as a result of public assistance that Ms. V. received.² Ms. V. testified that she has received a small amount of public assistance on behalf of J. from the State of Florida in the past, but is not receiving assistance now, except for a small amount in food stamps. According to the Florida child support agency, Ms. V. has been receiving Temporary Assistance to Needy Families (TANF) cash assistance since January of 2007.³ The Florida agency reports that in 2007 Ms. V. received amounts of TANF assistance varying from \$132 to \$158 per month; in 2008, amounts varying from \$95 to \$180 per month, and in 2009 \$180 per month for the months of January and February.

¹ Mr. C. is named on the birth certificate of one of the younger children. Exhibit 5, page 10. The other younger child's birth certificate does not name a father. Exhibit 5, page 4. J. birth certificate is not in the record, but their common surnames and the manner in which CSSD has calculated support indicate that all three children are of a single relationship.

² Exhibit 1, page 1.

³ Exhibit 11, page 1.

CSSD received the petition from Florida with an affidavit that Ms. V. signed on April 21, 2008.⁴ Ms. V.'s affidavit contains no information about the father, Mr. C. It contains an address and employer name for Ms. D., and indicates that Ms. D.'s highest level of education attained is fifth grade.⁵ Under a box for "Other Pertinent Information" are the following typed notes:

CP IS THE CARE TAKER/GRANDMOTHER, SHE CAME FROM DOMINCAN (*sic*) REP ON JUNE/2005, CP STATED THAT CHILD IN THIS CASE IS LIVING WITH HER SINCE TWO YRS A GO, THAT THE MOTHER IS LIVING IN ALASKA AND THAT CHILD WENT TO LIVE WITH HER DUE TO NCP HAS OTHER THREE CHILDREN AND DIDN'T HAVE MONEY TO SUPP ALL THE CHILDREN CHILD B/C ON FILE, CP PROVIDED WITH FL ID CARD FOR PICTURE ID...

Ms. D. lives in a No Name neighborhood in Anchorage with her two younger children and elderly mother, whom she also supports. Ms. D. does not receive support from anyone else. She has inquired about obtaining CSSD's assistance in collecting support, but was advised that CSSD could not help because the father is living in the Dominican Republic.

Ms. D. works at two different jobs. The first job is with DGS, which is a subsidiary of D. A. Ms. D. works for DGS forty hours per week and earns \$8.60 per hour.⁶ Ms. D. testified that this job does not pay as well as her other job, but it is important because it provides insurance benefits. This job also provides travel benefits, which allow Ms. D. to send her children to visit relatives at no cost. The second job, with C.H. C., Inc. pays \$14.50 per hour.⁷ Ms. D.'s hours appear to vary at C., but as of November 30, 2008, her year-to-date earnings were \$11,370.51. Dividing this amount by eleven shows that Ms. D. earns about \$1,033.63 per month from C., and works about 71 hours per month. Ms. D. testified that she worries her hours at C. may decline this year, following the trends of the general economy.

Ms. D. testified about her household expenses. Ms. D. pays \$863 per month for rent, \$90 per month for cable, \$50 per month for telephone, and \$60 to \$80 per month for electricity. Ms. D. pays about \$800 per month for food for the household. For more than five years Ms. D. has owned a 1993 Mercury that is now paid for. She spends about \$250 per month for gasoline and \$112 per month for car insurance, but was not able to estimate how much she spends on a monthly average for maintenance and repairs. Ms. D. owes more than \$7,000 in medical bills; these bills are in collection and she is not able to make payments on them. Ms. D. accrued these bills before she became eligible for her employer's health care plan, and for a while her doctor

⁴ Exhibit 1.

⁵ Exhibit 1, page 1.

⁶ Testimony of Ms. D. Exhibit 5, pages 6-7.

would not see her because she was not paying her bills. Ms. D. testified that she pays about \$100 to \$150 per month for clothes and shoes for the younger children, and that there are other expenses, such as money the children need for school expenses. Ms. D. pays about \$240 per month for non-food household and personal care items, but only when she can afford to. Ms. D. does not use alcohol or tobacco products.

CSSD has calculated Ms. D.'s support obligation under Civil Rule 90.3(i), based on Ms. D.'s actual income. There is no dispute that, absent any variation under Civil Rule 90.3(c), CSSD has correctly calculated Ms. D.'s support obligation for one child in third-party custody to be \$256 per month.⁸

Ms. V. also testified. Ms. V. expressed concern for Ms. D., and asked that she be helped as much as possible. Ms. V. stated that she took J. while she was working, but she never asked for public assistance so long as she was able to work. Around 2007, Ms. V. had some medical problems, and she asked for assistance at that time. Ms. V. reiterated her concern for Ms. D., and she asked that Ms. D. be helped as much possible because Ms. D. has a lot of responsibilities.

Ms. V. testified that she had received cash assistance of about \$100, but she does not currently receive support. She stated that J. had in the past received medical assistance, but she now receives medical insurance through Ms. D.'s employer. Ms. V. stated that Ms. D. sent J. a hundred dollars at Christmas and fifty dollars on her birthday, and that Ms. D. sends clothes and presents for J.

Ms. V. testified that she participates in a low-income housing program and pays \$387 per month for rent. She pays \$400 per month for food for her and J.; about \$100 per month for electricity; and \$32.50 per month for cable. Ms. V. pays about \$13 per month for public transportation; J. receives a free public transportation pass from her school. The household spends about \$75 per month for personal care items. Ms. V. does not have any credit card debt or other expenses.

Ms. V. testified that she earns about \$100 per week babysitting. Other than this income, she testified that she receives about \$300 from her son. It is not clear from the record, but it appears that this son is Mr. C., who is the father of both J. and the two children that Ms. D. cares for in Anchorage. Ms. V. has worked in the past. Ms. V. had not expected to be asked for an

⁷ Exhibit 5, page 8.

⁸ Exhibit 6, pages 6-8.

accounting of her income and expenses before the hearing, and therefore did not have precise amounts readily available. Review of the record suggests that Ms. V. may not have been clear on the meaning of some of the questions about her income, even after they had been translated. Ms. V.'s testimony suggested that her household is on a tight budget but is not unduly stressed, whereas she expressed great concern for the financial stress in Ms. D.'s household and the pressure from the burdens that Ms. D. bears.

III. Discussion

a. Ongoing Support

Because this case involves third-party custody, the amount of support is properly calculated under Civil Rule 90.3(i). There is no dispute that CSSD has correctly calculated Ms. D.'s support obligation under the rule using actual income information. Based upon the standard support formula, Ms. D.'s correct support amount for one child in third party custody would be \$256.⁹

Civil Rule 90.3(c) permits a variation from the standard support formula only upon "good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied." Any variation must be described in writing with the reasons supporting the variation.¹⁰ "Good cause" may include unusual circumstances which require variation to an amount that is "just and proper for the parties to contribute toward the nurture and education of their children."¹¹ In determining whether to vary a support award, consideration must be given to the custodial parent's income.¹²

This case presents clear and convincing evidence that manifest injustice would result if the support award were not varied. There are several factors supporting a variation in the amount of support. First, the relative income and expenses of the parties. Ms. V. certainly does not live a lavish lifestyle with income to spare, but she does appear to be in a situation that allows her to live with minimal expenses. At 17, J. is of an age to be somewhat more independent than the 11- and 13-year-old children who live with Ms. D. Ms. D.'s household budget does not appear to contain any extravagant expenses that could be easily done without, and in fact she cannot always meet the household's need for personal care items. Ms. D. spends over \$362 per month for her car, not including costs of maintenance and repairs. With two

⁹ Exhibit 6, pages 6-8.

¹⁰ Civil Rule 90.3(c)(1).

¹¹ *Id.*

¹² *Id.*

young teenagers and an elderly mother to care for, plus the need to get to two different jobs, a car is reasonable and necessary expense for someone living in No Name, whereas J. can get herself around West Palm Beach for free with her student public transportation pass, and Ms. V. has access to public transportation at a very reasonable cost.

Second, Ms. D. must care for her elderly mother. Ms. D.'s legal duty to support her mother arises from the same statute that requires her to support her children.¹³ The fact that Ms. D. works a second job in addition to a regular full-time job appears in part to be the result of her need to support her mother.

Third, Ms. V. receives support from her son. While the record does not confirm it, it appears likely that this son is Mr. C., the father of J. and the two children living with Ms. D. There is not enough information in the record to tell if the various members of the family have reached any kind of informal agreement, but it may be that the father is providing extra money to Ms. V. with the understanding that he is not paying support to Ms. D., and Ms. D. in turn is not paying support to Ms. V. If Mr. C. is paying all he can for support of his children to Ms. V., then Ms. V. would be receiving some support that Ms. D. is entitled to for the support of the younger children.

Fourth is the fact that Ms. D. is being required to pay several years worth of arrears. Even if these arrears are adjusted to the lowest possible level, they represent a substantial unanticipated obligation to a person in Ms. D.'s situation. Paying these arrears will add a significant strain on the resources currently available to the two younger children in Ms. D.'s care.

Finally, the long hours that Ms. D. works to support her family the best she can should not be overlooked. Ms. D.'s job at DGS is by itself a regular full-time job, and the insurance and travel benefits it provides are of great value to all of the children. Without taking a position, CSSD suggested the possibility that it might be appropriate to base support on just one regular full-time job. While necessity forces Ms. D. to work extraordinary hours, a parent's legal duty to support a child does not normally require more than a regular full-time job.

All of these factors must be evaluated in the light of the testimony of the parties. While neither party has money to spare, Ms. V.'s testimony suggests that somehow she and J. are getting by. In contrast, Ms. V. asked the administrative law judge to give the most possible help

¹³ AS 25.20.030.

to Ms. D. Ms. D. stated that, as a grandmother, she was concerned for the children in Ms. D.'s care and Ms. D.'s many responsibilities.

The younger two children in Ms. D.'s care are currently in a household that is struggling to meet basic financial needs. Ms. V.'s household does not appear to be in as great a level of distress. Because Ms. V. has received public assistance, J. will receive little or no benefit from an increased support amount.

Clear and convincing evidence shows that, because of unusual circumstances, manifest injustice would result if support in this case were not varied from the standard formula. Under the circumstances of this case, support should be set at \$50 per month for one child.

b. Pre-Order Arrears

Arrears in this case cover the period from January 1, 2007, through January, 2009. Generally, arrears are calculated according to the same formula as ongoing support.¹⁴ According to the Civil Rule 90.3 Commentary, "in some cases unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child."

Ms. D. was certainly aware that she was obligated to support J., but she was unaware that a formal child support case and withholding order was being prepared, and that arrears would be accruing over the two years it took for the Florida agency to forward the case to CSSD. It appears that, even at the time of the hearing, Ms. D. was not aware that the State of Florida had been helping to support her minor daughter, in spite of the fact that the Florida agency knew where it could contact Ms. D. As Ms. D. testified at the hearing, if she had known this obligation was accruing, she could have planned accordingly. At this point, the substantial amount of arrears represents a serious threat to the current and ongoing support of all three children, as well as Ms. D.'s mother. Under all the circumstances of this case, setting arrears any higher than \$50 per month would be unfair to both Ms. D. and the children, including J.

IV. Conclusion

CSSD has correctly calculated Ms. D.'s support obligation under Civil Rule 90.3(i) to be \$256 per month for one of Ms. D.'s three children in third-party custody. Ms. D. has presented clear and convincing evidence that manifest injustice would result if the amount were not varied from the standard formula. Under the circumstances of this case, \$50 per month is a proper

amount for Ms. D.'s ongoing support of J. Arrears in this case should also be set at \$50 per month for the period from January 1, 2007 through January 31, 2009.

V. Order

IT IS HEREBY ORDERED that Ms. D.'s support obligation for one child be set at \$50 per month, effective February 1, 2009.

Arrears shall be set at \$50 per month for the period from January 1, 2007, through January 31, 2009.

All other provisions of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on January 29, 2009, shall remain in effect.

DATED this 8th day of April, 2009.

By: Signed _____
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 27th day of April, 2009.

By: Terry L. Thurbor for _____
Signature
Dale A. Whitney _____
Name
Administrative Law Judge _____
Title

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