

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGSON REFERRAL
BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)	
)	OAH No. 09-0113-CSS
K. L. H.)	CSSD No. 001108929
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, K. L. H., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in this case on January 26, 2009. The Obligee child is D., DOB 00/00/01. After Mr. H. filed the appeal, CSSD submitted a Motion for Summary Adjudication. CSSD asserts there are no issues of material fact that need to be resolved in this case, so a hearing is not necessary.

The hearing was held on March 16, 2009. Mr. H. appeared in person; the custodian, P. D. W., did not participate. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded and the record closed on April 7, 2009. The record in this case incorporates the record in OAH 09-0112-CSS, due to the unique similarity of these cases.

CSSD’s motion for summary adjudication was denied at the hearing. Mr. H. raised issues of material fact that must be adjudicated – specifically, his income and whether he is entitled to a variance based on financial hardship, pursuant to Civil Rule 90.3(c).

Based on the record and after careful consideration, Mr. H.’s current income results in a child support amount of \$346, which is less than the 15% change required to modify a child support amount. Mr. H.’s child support may not be modified at this time, so it shall remain as \$381 per month. The obligor’s claim of financial hardship is denied.

II. Facts

A. Procedural Background

Mr. H.’s child support obligation for D. was set at \$381 per month in August 2002.¹ Mr. H. requested a modification on August 6, 2008.² On August 15, 2008, CSSD sent the parties a

¹ Exh. 1.

Notice of Petition for Modification of Administrative Support Order.³ Mr. H. provided financial information.⁴ On January 26, 2009, CSSD issued a Notice of Denial of Modification Review for the reason that the calculated child support amount – \$329 per month – did not meet the 15% change necessary for modification.⁵ Mr. H. appealed on February 17, 2009.⁶ Before the hearing, CSSD prepared child support calculations from the data on file at the Alaska Department of Labor and Workforce Development.⁷

B. Material Facts

Mr. H. has seven biological children: D. lives with his mother out of state; K. Jr. and E. live with their mother in Alaska; and his other children, Q., L., A. and K. II, live in Mr. H.’s home.⁸ The calculation of Mr. H.’s support amount for D. by necessity must take into consideration K. Jr. and Q., which will be addressed in the discussion section, below. This graph shows the birth order of all the children:

Children of this CSSD case, 001108929		Children in obligor’s home		Children in obligor’s other case, 001049028	
Child	Date of birth	Child	Date of birth	Child	Date of birth
				1) K. Jr.	00/00/92
		2) Q.	00/00/93		
3) D.	00/00/01				
				4) E.	00/00/01
		5) L.	00/00/04		
		6) A.	00/00/05		
		7) K. II	00/00/06		

² Exh. 2.

³ Exh. 3.

⁴ Exh. 4.

⁵ Exh. 5.

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Mr. H.’s support obligation for K. Jr. and E. is discussed in OAH No. 09-0112-CSS.

Mr. H. and his partner, C., have lived together for seven years. They have five children in the home – Mr. H.’s older son, Q.; C.’s older son, R., and the three younger children that they have together. C. is unemployed; before having the children, she worked at a hotel.

Mr. H. is employed and works full-time. In 2008 he had four employers, S. C.s, Inc., N. M. Services, U. J., Inc. and The A. C.⁹ His total income for the year was \$37,605.16.¹⁰

Mr. H. has a significant amount of financial obligations. He reported regular monthly expenses of \$4,747,¹¹ which includes \$2,200 for the mortgage payment; \$400 for food; \$220 for natural gas; \$66 for water; \$99 for Internet; \$250 for electricity; \$120 for cable service; \$74 for a cellular phone; \$728 for the payment on a 2004 Cadillac (with a balance of \$3,300); \$250 for gasoline and vehicle maintenance; \$250 for vehicle insurance; and \$90 for alcohol and or tobacco. Denali Kid Care provides medical coverage for the children.

Nothing is known of Ms. W.’s and D.’s circumstances. Ms. W. did not participate in the hearing and did not submit any evidence. The record indicates that when Mr. H.’s child support obligation for D. was first established, Ms. W. was not receiving public assistance.¹²

III. Discussion

A. Child support calculation

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹³ If the newly calculated child support amount is less than 15% higher or lower than the previous order, the Rule considers that a material change in circumstances has not necessarily occurred and CSSD is not required to modify the existing child support order.¹⁴

Mr. H.’s child support obligation for D. was set at \$381 per month in August 2002.¹⁵ After Mr. H. requested this modification and provided income information, CSSD prepared a

⁹ Exh. 11.

¹⁰ *Id.* CSSD’s Post-Hearing Brief notes that Mr. H.’s 2008 tax return reported income of \$35,779 for the year, a difference of \$1,826.16. Exh. 8 at pg. 2. Mr. H.’s income printout shows that the obligor received \$1,827.33 from S. C.s, Inc., so it appears likely that either he did not receive his W-2 from the employer or he forgot to include it in his income calculations. The higher figure should be used in his child support calculation.

¹¹ Exh. 8 at pg. 1.

¹² Exh. 1 at pg. 9.

¹³ AS 25.27.190(e).

¹⁴ Civil Rule 90.3(h).

¹⁵ Exh. 1.

draft child support calculation for D. of \$329 per month.¹⁶ However, this number was not obtained from a simple child support calculation. Instead, it was calculated using a multi-step process because, as can be seen from the graph on page 2, above, there are two children older than D. that affect the calculation of his child support.

Civil Rule 90.3(a)(1)(C) and (D) provide that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction from the parent's income in calculating the support obligation for a younger child. K. Jr. and Q. are both older than D., so Mr. H. is entitled to a deduction from his income in D.'s child support calculation for supporting both of these older boys. The deduction for K. Jr. is \$541 per month, the amount of Mr. H.'s child support order in the other case. The deduction for Q. is determined by calculating how much support Mr. H. would have to pay if Q. did not live with him. In essence, a calculation is done for both older children in succession, starting with the oldest, and the total deduction is inserted into the calculation for D.'s child support. CSSD's calculations are at Exhibit 7.

First, CSSD calculated the support amount for K. Jr., Mr. H.'s oldest child. At Exhibit 7, page 1, CSSD inserted Mr. H.'s 2008 income into the CSSD online child support calculator and after mandatory deductions for taxes and Social Security, calculated a child support amount of \$541 per month for K. Jr.¹⁷ CSSD next determined Mr. H.'s deduction for Q., which was done by performing a calculation that itself included the deduction of \$541 per month support for K. Jr. This results in a deduction for Q. of \$432 per month.¹⁸

Mr. H.'s support obligation for D. is determined by performing a final child support calculation that includes Mr. H.'s deduction of \$541 per month for K. Jr. and his deduction of \$432 per month for Q. This final calculation yields a child support amount for D. of \$346 per month.¹⁹ It is \$35 less than his current order, which constitutes a 9.2% change from \$381 per month.²⁰ Since this number does not meet the 15% change necessary, CSSD is not required to modify Mr. H.'s child support for D. downward to \$346 per month.

¹⁶ Exh. 5 at pg. 3.

¹⁷ Exh. 7 at pg. 1.

¹⁸ Exh. 7 at pg. 3.

¹⁹ Exh. 7 at pg. 5.

²⁰ $\$381 - \$346 = \$35 \div \$381 = 9.2\%$.

B. Financial hardship

The calculation of \$381 per month remains Mr. H.'s correct child support amount for D. Mr. H. stated that he cannot afford to pay the amount and he requested a variance due to financial hardship.

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."²¹ 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^[22]

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).²³

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. H. 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 from \$381 per month. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 D.

Mr. H. believes he is incapable of meeting the child support obligation because his income is not sufficient to meet all of his financial obligations. Mr. H.'s stated bills seem very high, considering his income. He has a large mortgage payment and one large car payment, but the numbers he gave suggest that Mr. H. will pay off the car loan within a matter of months. This will free up \$728 per month for his other bills and it should make a significant difference for Mr. H.'s household.

²¹ Civil Rule 90.3(c).

²² Civil Rule 90.3(c)(1).

²³ See Civil Rule 90.3, Commentary VI.E.1.

Even without paying off the car, Mr. H. would not necessarily be entitled to a reduction in his child support. Higher monthly living expenses or debts do not automatically entitle a parent to a reduction in the child support calculation. To lower the child support amount would in essence mean that D. is financing Mr. H.'s subsequent family. This is an unfair result for an older child. A person who has brought a child into the world may not have the freedom to make life choices later that deprive the child of support.²⁴ Mr. H. has a duty to support D., and this duty takes priority over other debts and obligations. D. is entitled to receive child support in an amount commensurate with Mr. H.'s ability to pay, as calculated pursuant to Civil Rule 90.3. Mr. H.'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.

IV. Conclusion

Mr. H. did not meet his burden of proving that CSSD's denial of modification was incorrect. His child support amount for D. should remain at \$381 per month.

V. Child Support Order

- CSSD's August 15, 2008, Notice of Denial of Modification Review is affirmed;
- Mr. H. remains liable for support for D. of \$381 per month.

DATED this 22nd day of May, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

²⁴ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 8th 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.]