

reportable income because he attends college full-time and K. is Alaska Native and receives free medical care.⁵

B. Material Facts

Mr. C. and Ms. E. were married in 2002. They have one child, K., DOB 00/00/03. K. lives with Ms. E. On April 23, 2009, the Superior Court issued a divorce decree in which the custodian was awarded legal and physical custody of the child and Mr. C. was ordered to pay child support of \$398 per month, effective May 1, 2009.⁶ The court used the figure of \$2,200 per month to represent Mr. C.'s income.⁷

Mr. C. was formerly in the military; he separated from the service on July 31, 2006. Following his separation, he was employed by Northern Air Cargo as a ramp agent, for which he earned approximately \$24,000 per year. He left his employment there after 90 days to go to work for the U.S. Postal Service as a mail handler, earning approximately \$29,200 per year. His employment was terminated during his probation because of illness. Thereafter, he worked for the United Parcel Service, NOAA, the Anchorage Hilton Hotel and the Anchorage Daily News (ADN). He was at the ADN from February 2008 through November 2008, earning \$11.50 per hour for 42 hours per week as an assistant manager. He was later promoted to district manager and began earning approximately \$35,000 per year.

Ms. E. filed the divorce action in August 2008. Soon thereafter, Mr. C. enrolled at the University of Alaska Anchorage for the fall 2008 term. Mr. C. continued to work at the ADN through November 2008, but resigned from that position. He testified he was unable to get all of his studies done because of the demands of his job at ADN, but also in the hearing he stated he left that job because he was unhappy with staffing changes made by the Daily News parent company, which increased his work duties. Mr. C. stated he plans to transfer to the University of Alaska Fairbanks after the spring 2009 semester is completed. He is studying criminal justice and he is getting a minor in paralegal studies. Mr. C. said he started school in order to get a better job and to take advantage of the G.I. Bill.

⁵ Exh. 8.

⁶ Exh. 11 at pg. 1.

⁷ *Id.*

Alaska Department of Labor and Workforce Development wage information for Mr. C. indicates he earned \$31,692.28 in 2008 from all of his employers.⁸ Currently, Mr. C. receives \$1,068 per month for a 50% VA-rated disability and \$590 per month for financial aid, which he uses to purchase his supplies and pay his tuition. He also receives \$357.50 for each three-week period of time during which he puts in approximately 50 hours of work-study employment for the VA. This equals about \$512.39 per month.⁹ The total of these benefits is \$2,134.64 per month. K. was formerly receiving children's insurance benefits as a result of Mr. C.'s disability but the obligor acknowledged he voluntarily terminated that VA payment to K. CSSD informed the obligor that those benefits could have been credited to him as child support for K.

Mr. C. submitted an expenses statement that indicates he pays \$150-\$200 per month for rent; \$79 for a cell phone; and one half of the \$552 per month payment on a Dodge Nitro that he and his roommate purchased in May 2008.

Ms. E. and K. do not have their own housing. They stay with family and friends and she pays whatever rent she can afford on a monthly basis. She works for the Anchorage School District for a few hours a day and is paid \$320 per month. Her expenses include \$100 for food; \$160 for storage; \$38 for vehicle maintenance (oil change); \$83 per month for vehicle insurance; \$20 per month for entertainment; and \$50 per month for personal care items. Ms. E. does not have any credit cards. Also, Ms. E. and K. are Alaska Native, so they receive the bulk of their medical care from the Alaska Native Medical Center.

III. Discussion

Mr. C. is challenging CSSD's calculation of his child support amount. He argues that he is a college student with zero income and that setting the child support amount at \$520 per month will create a financial hardship for him. He maintains that his child support should be based on his actual 2009 income, which is below the federal poverty level because he is only able to do a small number of work-study hours per week.

CSSD argues that Mr. C.'s child support should be based on his 2008 earnings. The agency's position is that Mr. C. is voluntarily underemployed and as a result his child support should be calculated based on his 2008 income. CSSD pointed out that Mr. C. did not claim he was unable to work while in school.

⁸ Exh. 11.

⁹ $\$357.50 \div 3 = \$119.16 \times 4 = \$476.64$ per month.

The person requesting the hearing, in this case, Mr. C., has the burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁰

A. Mr. C.'s Income

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support obligation is to be calculated from his or her "total income from all sources." By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).¹¹ In this case, Ms. E. requested child support services in August 2008, and the court's child support order became effective on May 1, 2009, so this is an arrears case in which Mr. C. is obligated to pay support from August 2008 through April 2009.

CSSD calculated Mr. C.'s 2008 child support from his actual income for the year, which consists of wages of \$31,692.28, the PFD and 2008 energy rebate, plus his VA work study benefits of \$2,295.15, for total income for child support purposes of \$37,256.43.¹² This annual income figure results in a child support amount of \$520 per month.¹³ This amount is correct because it is based on Mr. C.'s actual income figures and it was calculated pursuant to Civil Rule 90.3, the rule that dictates how child support is to be determined in Alaska.

The calculation for 2009 is not as straightforward. The court's child support order that became effective May 1, 2009, assumed Mr. C. would have monthly income of \$2,200, but the court did not explain the basis of that amount. The court most likely determined the income figure from the total of Mr. C.'s VA disability and work study benefits, \$2,134.64 per month, plus a monthly amount for the PFD. This is the best evidence of Mr. C.'s 2009 income and it should be used for the 2009 calculation here. There is no requirement that CSSD mirror a court's calculation for an arrears period prior to the effective date of the court order, but in this case, \$398 per month it is the most accurate and consistent monthly child support calculation.

CSSD argues that Mr. C. is voluntarily and unreasonably underemployed and his child support should be calculated from imputed income. It is not necessary to perform an analysis on this issue because the obligor has a source of income that is adequate for a child support calculation, especially given that this order is for a short arrears period.

¹⁰ 15 AAC 05.030(h).

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² Exh. 7 at pg. 6.

B. Financial Hardship

The second issue in this appeal is whether Mr. C. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). CSSD correctly calculated Mr. C.'s child support at \$520 per month for 2008 and his 2009 amount is now correctly calculated at \$398 per month. It is from these calculations that Mr. C.'s 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 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 for under the schedule in Civil Rule 90.3(a).¹⁵

Based on the evidence presented, Mr. C.'s situation does not present "unusual circumstances" of the type contemplated by Civil Rule 90.3. Mr. C. 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 reduced.

IV. Conclusion

Mr. C. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Nor did he prove by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount. Based on the

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Id.

14 Civil Rule 90.3(c)(1).

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

evidence as a whole, Mr. C.'s child support should be set at \$520 per month for August 2008 through December 2008, and \$398 per month for January 2009 through April 2009. Ongoing child support has been set by the court.

V. Child Support Order

- Mr. C. is obligated to pay child support arrears of \$520 per month for August 2008 through December 2008, and \$398 per month for January 2009 through April 2009;
- Ongoing child support has been set by the court effective May 1, 2009;
- CSSD will be making any necessary adjustments based on the payment of medical insurance premiums;
- All other provisions of CSSD's March 3, 2009, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 8th 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 26th 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.]