

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0176-CSS
J. J. S.	)	CSSD No. 001102281
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case involves an appeal by obligor J. J. S. of a Vacate Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on February 13, 2009. The child in this case is A., DOB 00/00/97.

The formal hearing was held on April 20, 2009. Mr. S. participated in person; the other party, T. M. O., did not participate.<sup>1</sup> Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded; the record closed on June 9, 2009.

Based on the record and after careful consideration, Mr. S.'s arrears are set at \$150 per month for the period from May 1999 through December 2000, pursuant to the good cause provisions of Civil Rule 90.3(c).

**II. Facts**

**A. Procedural History**

On April 9, 2001, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. S.'s child support at \$696 per month from May 1999 through December 1999 and \$699 per month for 2000, all of which totals arrears of \$13,956.<sup>2</sup> The Alaska Superior Court entered an order for Mr. S. to pay child support as of January 1, 2001, so this administrative action addresses the time period only from May 1999 through December 2000.

On July 16, 2004, the court suspended Mr. S.'s ongoing child support effective January 20, 2004, because Mr. S. had been granted custody of the child on January 22, 2004.<sup>3</sup> Mr. S. has had custody of A. since that time.

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<sup>1</sup> This case involves arrears owed to the State of Alaska for public assistance reimbursement, so Ms. O. has no financial interest in the matter. The notice of the date and time for the hearing was sent to her last known address, but neither the green card nor an undelivered envelope were returned to the Office of Administrative Hearings.

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

<sup>3</sup> Exh. 4.

On July 11, 2007, Mr. S. filed a Motion to Vacate a Default Order with CSSD.<sup>4</sup> On February 13, 2009, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order. The revised order calculated Mr. S.'s arrears for the time period from May 1999 through December 1999 at \$519 per month, based on his 1999 tax return.<sup>5</sup> For 2000, CSSD calculated Mr. S.'s child support at \$360 per month, based on his 2000 tax return.<sup>6</sup> Mr. S. appealed on March 10, 2009.<sup>7</sup> He claims he and Ms. O. had shared custody of A. and he paid her \$125 per week from April 1998 through February 1999.<sup>8</sup>

### **B. Material Facts**

Mr. S. lives with his partner, L. They have three children in the home – A., the child of this case; B., their child together; and L.'s child from a prior relationship. L. is employed and earns about \$2,000 per month. They have average monthly expenses, except for rent, which is \$2,000 per month, childcare of \$560 per month and approximately \$9,000 in unpaid medical expenses. In addition, they owe L.'s parents \$14,500 and an attorney \$5,000, which they pay at about \$500 per month. L. owns a duplex and has a loss on the property of about \$100 per month.

## **III. Discussion**

### **A. CSSD's Calculations**

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD's regulations allow the agency to vacate an administrative child support order "if the support order was based on a default income figure . . . that . . . is not an accurate reflection of the obligor's income for purposes of calculating the obligor's child support obligation."<sup>10</sup> When an obligor parent requests CSSD to conduct a default review, he or she must provide the information necessary to determine the parent's actual income and child support obligation for each year at issue.<sup>11</sup> The person who filed the appeal, in

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<sup>4</sup> Exh. 5.

<sup>5</sup> Exh. 12 at pg. 8.

<sup>6</sup> Exh. 12 at pg. 7.

<sup>7</sup> Exh. 13.

<sup>8</sup> Exh. 10.

<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> 15 AAC 125.121(a).

<sup>11</sup> 15 AAC 125.121(b).

this case, Mr. S., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.

Mr. S. requested a default review and complied with the requirement to provide financial information sufficient to calculate his support obligation for 1999 and 2000. CSSD issued a vacate order and a revised child support order for each of the two years, which the agency further reduced to \$486 per month for May through December of 1999 and \$329 per month for 2000. This vacate and additional adjustment result in child support arrears of \$7,836, just about one-half of the original arrears of \$13,956.<sup>12</sup> CSSD would collect these arrears at about \$235 per month, according to the agency's amortization chart at 15 AAC 125.545. Mr. S. may have arrears still owing from the court order requiring him to pay support through January 2004, but those amounts are unknown.

At the hearing, Mr. S. claimed that he and Ms. O. had shared custody of A. during the time period at issue, but he was unable to provide any evidence to corroborate his testimony. According to Mr. S., his former babysitter from that time period is a friend of Ms. O.'s and would not provide a statement.<sup>13</sup> Additionally, Mr. S. said he was not able to acquire copies of the checks he wrote to the babysitter because his bank has subsequently ceased operating in Alaska.<sup>14</sup>

### **B. Financial Hardship**

In the absence of any other evidence regarding the shared custody issue, CSSD's latest calculations of Mr. S.'s arrears are correct. That is not the end of the inquiry, however, because Mr. S. requested a good cause reduction based on 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." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case may be sufficient to establish "good cause" for a variation in the support award:

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<sup>12</sup> See Exh. 1 at pg. 8.

<sup>13</sup> See Mr. S.'s letter dated June 16, 2009.

<sup>14</sup> *Id.*

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 . . .  
[15]

Civil Rule 90.3 also states that when establishing support arrears, the court or tribunal should consider all the relevant factors in the case. The Commentary provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. Vachon v. Pugliese, 931 P.2d 371, 381-382 (Alaska 1996). However, in some circumstances 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. See also Commentary VI.B.2.<sup>[16]</sup>

In applying the above language to Mr. S.'s arrears, several factors must be taken into consideration. First, A. is now living with Mr. S., so any child support the obligor has to pay on this case would deprive A. of the support she should have as a member of Mr. S.'s household. This essentially makes A. bear the burden of those arrears. Second, Mr. S. has a child support order in which the court ordered him to pay \$726 per month for the period from January 1, 2001, through January 20, 2004, which totals roughly \$26,604.39.<sup>17</sup> The total amount of Mr. S.'s arrears from that court order is unknown, but the addition of \$7,836 for these administrative arrears will further place a financial burden on the family and add to the impact on A..

The Alaska Supreme Court holds that factors such as these, which relate to the well being of an obligee, are especially important in determining whether there is good cause to vary the child support amount. The court has stated:

The meaning of the term "good cause," however, is to "be determined by the context in which it is used."<sup>18</sup> That context, for Civil Rule 90.3 purposes, must focus first and foremost on the

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15 Civil Rule 90.3(c)(1).

16 Civil Rule 90.3, Commentary VI.E.1.

17  $(\$726 \times 36 \text{ months}) + (\$726 \div 31 \times 20 \text{ days}) = \$26,136 + \$468.39 = \$26,604.39$ .

18 Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

needs of the children. See Civil Rule 90.3, commentary at sec. I(B).<sup>19]</sup>

Based on all the evidence, Mr. S. proved by clear and convincing evidence that manifest injustice would result if he were required to pay the full arrears in this case. It makes little sense and it would be unjust to burden Mr. S.'s household by adding more child support debt for A. to his current obligation to support A. in the home, especially in light of his court order for support. Setting Mr. S.'s child support at \$150 per month should reduce his total arrears to \$3,000 plus applicable fees and interest.

#### **IV. Conclusion**

Mr. S. met his burden of proving by clear and convincing evidence that good cause exists to reduce his child support arrears for May 1999 through December 2000. Mr. S.'s arrears should be set at \$150 per month for the arrears period in order to avoid placing an additional financial burden on A., the child in this case who is now in Mr. S.'s custody.

#### **V. Child Support Order**

- Mr. S. is liable for child support of \$150 per month for the period from May 1999 through December 2000;
- All other provisions of CSSD's February 13, 2009, Vacate Order, and revised Administrative Child Support and Medical Support Order remain in effect.

DATED this 29<sup>th</sup> day of June, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>19</sup> *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

**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 20<sup>th</sup> day of July, 2009.

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Director  
Title

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