

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0188-CSS
D. J. C.	)	CSSD No. 001121150
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The Obligor, D. J. C., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 9, 2009. The Obligee child is T., DOB 00/00/03.

The hearing was held on April 23, 2009. Mr. C. participated by telephone; the custodian, M. J. J., appeared in person. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD in person. The hearing was recorded and the record closed on May 22, 2009.

Based on the record and after due deliberation, Mr. C.’s child support is modified to \$741 per month for one child, effective October 1, 2008. The obligor’s claim of financial hardship is denied.

**II. Facts**

**A. Background**

Mr. C.’s child support obligation for T. was set at \$50 per month in January 2005.<sup>1</sup> Ms. J. requested a modification on September 2, 2008.<sup>2</sup> On September 5, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On February 9, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C.’s ongoing child support to \$641 per month, effective October 1, 2008.<sup>4</sup> Mr. C. appealed on March 23, 2009. He asserts primarily that his income is lower than the amount CSSD used because he was off work when his infant son was in the hospital.<sup>5</sup>

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

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

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

<sup>4</sup> Exh. 4. 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).

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

## **B. Material Facts**

Mr. C. is employed by P. E. C. He has worked for the company since mid-2007. According to the Alaska Department of Labor, Mr. C. earned \$60,579.01 during 2008.<sup>6</sup> However, his tax return reported annual earnings of a slightly lesser amount, \$58,472.<sup>7</sup> The discrepancy is probably owing to the fact that he has pretax items such as retirement and possibly medical care, but the obligor did not submit his 2008 W-2 form, which probably would have adequately explained the different figures. Because that document is an essential part of a tax return, Mr. C. did not supply all of the information necessary to determine his 2008 income. As a result, his earnings as reported to the Alaska Department of Labor should be used to calculate his child support obligation.

Mr. C. lives with his girlfriend, F. They have one child together named X., date of birth 00/00/08, and F. has a prior child named K. in the home. F. is able to work but she does not at this time, most likely due to the fact that their child is still a toddler.

Mr. C. reported regular monthly expenses of \$1200 for rent; \$600 for food; \$324 for natural gas; \$166.36 for electricity; \$136.18 for Internet and telephone; \$33.84 for cable services; \$27.73 for a cell phone; \$220 for vehicle gasoline and maintenance; \$240 for vehicle insurance; \$200 for entertainment and personal care items; and a balance owing for medical expenses of \$539.95.<sup>8</sup>

Mr. C. was off work from February 28, 2009 through March 29, 2009 due to the illness of his son X., who had contracted pneumonia and had to be rushed to the hospital. X. was released on March 15, 2009 and is getting better but Mr. C. reports there are still infectious spots in his lungs.

Mr. C. agreed to provide his girlfriend F.'s 2008 tax return, but all that was submitted was the first page that shows income of \$12,202.<sup>9</sup>

## **III. Discussion**

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”<sup>10</sup> If the newly calculated child support amount is more than

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

<sup>7</sup> Exh. 11 at pg. 3.

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

<sup>9</sup> Exh. 11 at pg. 2.

15% different than the previous order, the Rule assumes a material change in circumstances has occurred and the support amount may be modified.<sup>11</sup>

CSSD said Mr. C.'s modified child support at \$641 per month, but his actual 2008 income supports a higher amount, \$741 per month for one child. Mr. C. claimed that he does not always work the same amount of time every year or so his income will not be the same from year to year. He also asserts that just because his 2008 income exceeded \$60,000 does not guarantee he will earn the same amount in 2009. He reported his year-to-date income as of April 11, 2009 was \$12,854.<sup>12</sup>

While it is possible that the illness of Mr. C.'s son has decreased his 2009 income somewhat, it is still possible for Mr. C. to meet or exceed his 2008 income in 2009. Although he claims his 2009 income is reduced, his first-quarter income in 2008 was also much lower than the later quarters.<sup>13</sup> Thus it is possible that Mr. C.'s 2009 income is following the same pattern that it did in 2008. Accordingly, Mr. C.'s actual 2008 income should be the basis of his modified child support calculation.

CSSD's calculation is now correct and Mr. C. stated that he cannot afford the modified child support amount and 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."<sup>14</sup> 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 . . . .<sup>[15]</sup>

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<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> Civil Rule 90.3(h).

<sup>12</sup> Exh. 9 at pg. 2.

<sup>13</sup> See Exh. 10 at pg. 1.

<sup>14</sup> Civil Rule 90.3(c).

<sup>15</sup> Civil Rule 90.3(c)(1).

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>16</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. 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 varied. There are no "unusual circumstances" present to warrant varying his child support calculated under Civil Rule 90.3 for T.

#### **IV. Conclusion**

Mr. C. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his modified child support amount calculated under Civil Rule 90.3 were not varied. CSSD correctly calculated his modified child support at \$741 per month, which should be adopted.

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

- Mr. C. is liable for modified ongoing child support in the amount of \$741 per month, effective October 1, 2008;
- All other provisions of CSSD's February 9, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 26th day of June, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>16</sup> See Civil Rule 90.3, Commentary VI.E.1.

**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 13th day of July, 2009.

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

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