

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

IN THE MATTER OF:)	
)	OAH No. 09-0215-CSS
T. R. F.)	CSSD No. 001153390
_____)	

DECISION AND ORDER

I. Introduction

The obligor, T. R. F., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 26, 2009. The Obligee child is Z., DOB 00/00/07.

The hearing was held on May 7, 2009. Mr. F. appeared by telephone; the mother, I. M. S., appeared by telephone during part of the hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 7, 2009.

Based on the record as a whole and after careful consideration, Mr. F.'s child support arrears are set at \$200 per month for the period from March 2008 through September 2008, pursuant to Civil Rule 90.3(c). Ongoing child support is suspended as of October 2008, pursuant to a court order granting Mr. F. temporary custody of the child. Child support for 2009 and ongoing is set at \$388 per month, which is suspended, but which will be reinstated in the event custody of the child returns to Ms. S.

II. Facts

A. History

Ms. S. received public assistance benefits for Z. beginning in March 2008.¹ CSSD initiated paternity establishment on May 31, 2008,² and after genetic tests revealed that Mr. F.'s probability of paternity of Z. is 99.99%,³ CSSD issued an Order Establishing Paternity on August 25, 2008.⁴ Mr. F. did not respond to CSSD's order to provide financial information.⁵

¹ Exh. 13 at pg. 3.
² Exh. 1.
³ Exh. 3 at pg. 4.
⁴ Exh. 4.
⁵ Pre-hearing brief at pg. 1.

On January 4, 2009, CSSD served an Administrative Child Support and Medical Support Order dated October 24, 2008 on Mr. F. by process server.⁶ He requested an administrative review and provided a court order dated September 29, 2008, regarding custody of Z.⁷ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on March 26, 2009, that set Mr. F.'s ongoing child support at \$423 per month, effective April 1, 2009, with arrears of \$2,961 for the period from March 2008 through March 2009.⁸ On April 2, 2009, Ms. S. withdrew from CSSD's services.⁹ On April 14, 2009, Mr. F. filed an appeal and requested a formal hearing. He asserted that he cannot afford the amount CSSD calculated and that manifest injustice would result if his child support were not lowered because he now has custody of Z.¹⁰

B. Material Facts

Mr. F. and Ms. S. are the parents of Z., DOB 00/00/07. Ms. S. received Native public assistance on the child's behalf beginning in March 2008, but apparently lost her housing in September 2008. As a result, Mr. F. was awarded temporary custody by the court on September 29, 2008.¹¹

Mr. F. is a mechanic. His primary employment is with P. P. P., where he works full-time, but also he has worked part-time for Regal Foods, Inc., and AASL General Contractors. His schedules are erratic and unreliable. In 2008, Mr. F.'s income was \$7,741.72 from Regal Foods, \$3,893.63 from AASL, and \$28,667.65 from P. P., all of which total \$40,304.¹² A child support amount calculated from that income figure equals \$424 per month.¹³

Mr. F. insisted that he took on the part-time work for the other employers in order to better afford his support obligations. In the hearing, CSSD agreed that his 2009 and ongoing child support should include only Mr. F.'s income from his primary employer, P. P. P. CSSD

⁶ Exh. 1.

⁷ Exh. 7.

⁸ Exh. 10.

⁹ Exh. 11.

¹⁰ Exh. 12.

¹¹ Exh. 7 at pg. 3.

¹² Exh. 12 at pg. 8.

¹³ See Attachment A. Mr. F. pays \$825 per month in two cases involving older children; this amount is included as a deduction in the obligor's child support calculation for Z.

estimated his annual income from that work at \$38,480 (\$18.50 per hour x 2080 hours per year).¹⁴ A child support amount calculated from that income equals \$388 per month.¹⁵

Ms. S. does not yet have housing. Recently she started working full-time at Carr's, where she earns \$7.50 per hour. She has minimal expenses – taxi rides back and forth to work and a cell phone that costs \$20 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁶ This obligation begins when the child is born.¹⁷ 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), up to six years prior to service on the obligor of notice of his or her support obligation.¹⁸ Ms. S. began receiving public assistance benefits on Z.'s behalf in March 2008, so pursuant to 15 AAC 125.105(a)(1)-(2) that is the first month for which CSSD may charge Mr. F. with child support.

The essential issue in this case is not whether Mr. F. is obligated to pay support, but whether that support should be adjusted now that he has custody of Z.

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:

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 . . .

[19]

¹⁴ Exh. 13 at pg. 2.

¹⁵ *Id.*

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁸ 15 AAC 125.105(a)(1)-(2).

¹⁹ Civil Rule 90.3(c)(1).

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.^[20]

In applying the above language to Mr. F.'s arrears, several factors must be taken into consideration. First, Z. is now living with Mr. F., so any child support the obligor has to pay on this case would deprive Z. of the support he should have as a member of Mr. F.'s household. This essentially makes Z. bear the burden of those arrears. Second, Mr. F. has two other child support cases for which CSSD is collecting a total of \$825 per month. This has also increased the financial burden on the family and adds to the impact on Z.

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."²¹ That context, for Civil Rule 90.3 purposes, must focus first and foremost on the needs of the children. See Civil Rule 90.3, commentary at sec. I(B).^[22]

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. F. 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. F.'s household by adding more child support debt to his current obligation to support Z. in the home, especially in light of his other two cases. Setting

²⁰ Civil Rule 90.3, Commentary VI.E.1.

²¹ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

²² *Doyle v. Doyle*, 815 P.2d 366 (Alaska 1991).

Mr. F.'s child support at \$200 per month constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). This should reduce his total arrears to \$1,400, plus applicable fees and interest, and CSSD's regulations indicate the total amount will be collected at approximately \$80 per month.²³

There is no ongoing support due because Mr. F. has custody of Z. However, an ongoing child support amount will be put in this order, but it will not be collected. It will remain in place so in the event Mr. F. becomes liable for paying support in the future, CSSD can begin income withholding much sooner than if the division has to initiate a modification procedure. CSSD calculated a 2009 child support amount of \$388 per month, which will be adopted as of June 2009, the first month after the hearing.

IV. Conclusion

Mr. F. met his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. Mr. F. proved by clear and convincing evidence that there is good cause in this case to set his child support arrears at \$200 per month for the period from March 2008 through September 2008. Mr. F. is not liable for support for the period from October 2008 through May 2009, the month of the hearing. Ongoing support will be set as of June 2009, and suspended, so long as Mr. F. has custody of Z.

V. Child Support Order

- Mr. F. is liable for support arrears in the amount of \$200 per month for the period from March 2008 through September 2008;
- Mr. F. is not liable for support for October 2008 through May 2009 because he has custody of the child;
- Ongoing support is set at \$388 per month, effective June 2009;
- Ongoing support is suspended as of June 2009 and it will remain suspended so long as Mr. F. has custody of the child;

²³ 15 AAC 125.545(a).

- All other provisions of CSSD's March 26, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 23rd 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 10th day of July, 2009.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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