

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

IN THE MATTER OF:	)	
	)	OAH No. 09-0248-CSS
K. H. T.	)	CSSD No. 001142835
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, K. H. T., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 23, 2009. The Obligee children are Y. and Z., twins born on 00/00/06.

The hearing was held on May 27, 2009. Mr. T. appeared by telephone; the custodian of record, C. L. P., did not participate.<sup>1</sup> Andrew Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded and the record closed on June 10, 2009.

Based on the record and after careful consideration, Mr. T.' child support is modified to \$159 per month, effective November 1, 2008, and further modified to \$182 per month, effective January 1, 2009, and ongoing.

**II. Facts**

**A. History**

Mr. T.' child support obligation for Y. and Z. was previously established at \$83 per month for two children in April 2007.<sup>2</sup> On October 10, 2008, Ms. P. initiated a modification review of the order.<sup>3</sup> On October 27, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>4</sup> Mr. T. did not provide income information.<sup>5</sup> On March 23, 2009, CSSD issued a Modified Administrative Child Support and Medical

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<sup>1</sup> A telephone call placed to Ms. P.'s number before the hearing went unanswered.  
<sup>2</sup> Exh. 5.  
<sup>3</sup> Exh. 1.  
<sup>4</sup> Exh. 2.  
<sup>5</sup> Pre-hearing brief at pg. 1.

Support Order that set Mr. T.' modified ongoing child support at \$580 per month for two children, effective November 1, 2008.<sup>6</sup> Mr. T. filed an appeal on April 6, 2009.<sup>7</sup>

**B. Material Facts**

Mr. T. and Ms. P. are the parents of twins, Y. and Z., DOB 00/00/2006. The parents lived together through January 2008 and have been exercising shared custody since then. Their original schedule was two weeks on, two weeks off but Ms. P. moved out of town approximately one month before the hearing. This has necessitated a change in their custody schedule to one week on and one week off.

Mr. T. works for AES Electric Supply doing inside sales. He earns \$17 per hour for full-time work and earns over-time on a fairly regular basis for about one half of the year. Mr. T. does not pay union dues or a retirement contribution. However, he does pay childcare expenses of \$300 per month over and above his daycare assistance benefit. Without it, his childcare expenses would be about \$1,200 per month.

Ms. P. did not participate in the hearing but Mr. T. offered what he knows of her circumstances. Ms. P. is unemployed and recently had another child in September 2008. She has not worked for about three to four years because of medical problems, but Mr. T. does not consider those problems to be sufficient to keep her from working. She is currently supported by her boyfriend and in the past worked as a waitress. Ms. P. has a 14-year-old son for whom she pays child support in a separate case.

After the hearing, Mr. T. provided multiple documents, including his 2008 tax return, copies of four pay stubs, affidavits confirming he has 50% shared custody of Y. and Z., and a list of expenses for consideration of a financial hardship.<sup>8</sup> CSSD checked its records and confirmed Ms. P. has two prior children, X., DOB 00/00/95, for whom she has an order to pay support of \$50 per month,<sup>9</sup> and A., DOB 00/00/01, who is in Ms. P.'s primary custody.<sup>10</sup>

CSSD prepared revised calculations based on the evidence obtained during the hearing and post-hearing documents filed by Mr. T. First, CSSD determined what each parent's support

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<sup>6</sup> Exh. 3.

<sup>7</sup> Exh. 4.

<sup>8</sup> Exhs. 7-12.

<sup>9</sup> Ms. P. paid a total of \$424.78 in 2008, but nothing in 2009. CSSD's calculations correctly gave her a deduction for paying support for X. in 2008, but not in 2009. *See* Civil Rule 90.3(a)(1)(C).

<sup>10</sup> Post-hearing brief at pg. 1.

obligation would be if the other party had primary custody of both children. For 2008, CSSD used Mr. T.' actual income of \$23,400, as reflected on his 2008 tax return, and an adjustment for work-related child care.<sup>11</sup> A primary custody calculation results in a support amount of \$459 per month for two children in 2008.<sup>12</sup> For 2009, CSSD estimated Mr. T.' total income at \$36,884.25, based on his wage of \$17 per hour, with an average of 4.69 hours of overtime per pay period received during one half of the year. This primary custody calculation results in a support amount of \$586 per month for two children in 2009.<sup>13</sup>

CSSD calculated Ms. P.'s piece of the primary custody calculations using the mean wage for waitresses in the Anchorage/Mat-Su Valley area of \$9.72 per hour. For 2008, CSSD included a deduction for supporting a prior child in the home and for paying support for a prior child.<sup>14</sup> The primary custody calculation obtained from this information equals \$247 per month for two children.<sup>15</sup> CSSD used the same information for the 2009 primary custody calculation, except that the division did not include a deduction for the support Ms. P. pays for her older child, X., because she has not yet paid any support for the child in 2009. The 2009 primary custody amount for Ms. P. equals \$344 per month for two children.<sup>16</sup>

When Mr. T.' and Ms. P.'s primary custody support amounts are inserted into shared custody calculations for 2008 and 2009, it results in Mr. T. having a child support obligation of \$159 per month for two children, effective November 1, 2008, and \$182 per month, effective January 1, 2009.<sup>17</sup>

### **III. Discussion**

#### **A. Modification**

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." In a modification situation, if the child support amount calculated from an obligor's current income is more than a 15% change from the

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<sup>11</sup> Mr. T. was incarcerated in early 2008, so his 2008 income was lower than 2009's is expected to be. Also, he is not eligible for the PFD, pursuant to AS 43.23.005(d), so CSSD did not include it for 2008 or 2009.

<sup>12</sup> Exh. 15.

<sup>13</sup> Exh. 16.

<sup>14</sup> Exh. 13 at pgs. 1-2.

<sup>15</sup> Exh. 13 at pg. 1.

<sup>16</sup> Exh. 14 at pgs. 1-2.

<sup>17</sup> Exhs. 17 & 18.

previous order, Civil Rule 90.3(h) assumes that “good cause and material change in circumstances” has occurred and allows a modification to go forward. Mr. T.’ child support was originally set at \$83 per month for two children, so any increase over \$95.45 presumes that a modification may be made.<sup>18</sup> This modification is effective November 1, 2008.<sup>19</sup>

### **B. Shared custody calculation**

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.<sup>[20]</sup>

Thirty percent (30%) of the year is 110 days. In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.<sup>21</sup>

Shared custody child support is calculated by determining each parent’s primary custody child support obligation to the other parent, as if each parent had primary custody of the child(ren). The figures are then inserted into a mathematical formula that calculates the paying parent’s child support from a combination of both parents’ primary custody support obligations and their individual shared custody percentages.

Mr. T.’ primary custody support amounts for 2008 and 2009, as discussed above, are \$459 per month and \$586 per month, respectively. Likewise, Ms. P.’s primary custody support amounts for 2008 and 2009 are \$247 per month and \$344 per month. When the parties’ child support amounts are inserted into the shared custody calculation, it results in Mr. T. having a child support obligation of \$159 per month for two children, effective November 1, 2008, and \$182 per month, effective January 1, 2009.

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<sup>18</sup> \$83 + 15% = \$95.45.

<sup>19</sup> A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). CSSD sent the parties a notice of the modification on October 27, 2008, so the modification is effective November 1, 2008. *See* Exh. 2.

<sup>20</sup> Civil Rule 90.3(f)(1).

<sup>21</sup> Civil Rule 90.3, Commentary V.A.

### C. Financial hardship

The final issue in this appeal is whether Mr. T. 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. T.' modified child support at of \$159 per month for two children, effective November 1, 2008, and \$182 per month, effective January 1, 2009. It is from these calculations that Mr. T.' 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 . . . .<sup>[22]</sup>

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>23</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. T. 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. Mr. T.' financial situation is somewhat strained because he has Y. and Z. in the home 50% of the time, but his income is much higher in 2009 than it was in 2008. Also, his modified child support as correctly calculated by CSSD based on the parties' shared custody has significantly reduced Mr. T.' modified support obligation from the amount originally determined by the division.

Thus, in the absence of clear and convincing evidence of manifest injustice, it cannot be concluded that good cause exists to further reduce Mr. T.' child support amount.

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<sup>22</sup> Civil Rule 90.3(c)(1).

<sup>23</sup> See Civil Rule 90.3, Commentary VI.E.1.

#### **IV. Conclusion**

Mr. T. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect, as required by 15 AAC 05.030(h). He did not, however, meet his burden of proving by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

The parties are exercising 50/50 shared custody of Y. and Z. Using their respective incomes and resulting primary custody calculations, Mr. T.' modified ongoing child support obligation is now correctly calculated at \$159 per month for November and December 2008, and \$182 per month, effective January 1, 2009. These figures should be adopted.

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

- Mr. T.' child support is modified to \$159 per month for Y. and Z. for November and December 2008;
- Mr. T.' child support is further modified to \$182 per month, effective January 1, 2009, and ongoing;
- All other provisions of CSSD's March 23, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 30<sup>th</sup> 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 17<sup>th</sup> day of July, 2009.

By: Signed \_\_\_\_\_  
Signature  
Christopher Kennedy \_\_\_\_\_  
Name  
Deputy Chief Administrative Law Judge  
Title

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