

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

IN THE MATTER OF: )  
 )  
L. N. A. ) OAH No. 09-0328-CSS  
 ) CSSD No. 001133810  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The Obligor, L. N. A., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 31, 2009. The Obligee child is L., DOB 00/00/02.

The hearing was held on July 1, 2009. Mr. A. appeared in person; the custodian, K. K. P., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on July 1, 2009.

Based on the record and after due deliberation, Mr. A.’s child support is modified to \$367 per month for one child, effective May 1, 2009, and ongoing.

**II. Facts**

**A. Background**

Mr. A.’s child support obligation for L. was set at \$731 per month in January 2008.<sup>1</sup> Ms. P. requested a modification on October 28, 2008.<sup>2</sup> On July 1, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> CSSD did not receive financial information from Mr. A. On March 31, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. A.’s ongoing child support to \$927 per month, effective December 1, 2008.<sup>4</sup> Mr. A. appealed on June 11, 2009, asserting primarily that he was laid off his prior job and is working for less at his subsequent place of employment.<sup>5</sup>

**B. Material Facts**

In 2008, Mr. A. was employed by D. D., where he earned \$29 per hour. He was laid off on April 20, 2009, prior to the drilling rigs being shut down for a period of time. He went to work for T. E. the next day after concluding he was far enough down on the seniority list at D.

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1 Exh. 1.  
2 Exh. 2.  
3 Exh. 3.  
4 Exh. 4.  
5 Exh. 5.

that others would be hired back before him. According to the Alaska Department of Labor and Workforce Development, Mr. A.'s total income in 2008 was \$53,167.90, as reported during the hearing by CSSD.<sup>6</sup> When inserted into CSSD's online child support calculator, this annual income figure yields a support amount of \$718 per month.<sup>7</sup>

Mr. A. currently works for T. E. as an apprentice electrician and earns \$17.50 per hour part-time, usually about 20-30 hours per week.<sup>8</sup> His hours vary because he must be supervised by a journeyman electrician and one is not always available. Mr. A. said it would take him about 4-5 years to become a journeyman himself. Mr. A.'s three most recent paystubs indicate his average earnings are \$921.66 per pay period.<sup>9</sup> An annual income figure calculated from these average earnings equals \$23,963.16 per year.<sup>10</sup> When inserted into CSSD's online calculator, this annual income figure yields a support amount of \$367 per month.<sup>11</sup>

Mr. A. has few financial obligations. He reported regular expenses of about \$1,800-\$1,900 per month, which includes \$700 for rent; \$300-\$400 for food; \$24 for cable service; \$197 for a cellular phone; \$120-\$180 for gasoline; \$311 for vehicle insurance; \$60 for personal care items; and \$50 for tobacco.<sup>12</sup> He owns a 2002 Chevrolet truck free and clear and does not have any credit card debt.<sup>13</sup>

Ms. P. appeared by telephone at the hearing but testified primarily that she had not received any child support from Mr. A. since May 2009.

### **III. Discussion**

#### **A. Mr. A.'s income**

A parent is obligated both by statute and at common law to support his or her children.<sup>14</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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>15</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes

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<sup>6</sup> Mr. A. did not challenge this figure.

<sup>7</sup> See Attachment A.

<sup>8</sup> Exh. 7 at pg. 1.

<sup>9</sup> See Exh. 7 at pg. 6.

<sup>10</sup> \$921.66 x 26 pay periods = \$23,963.16.

<sup>11</sup> See Attachment B.

<sup>12</sup> Exh. 7 at pg. 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>15</sup> AS 25.27.190(e).

“material change in circumstances” has been established and the order may be modified. If the 15% change has not been met, CSSD is not required to modify the child support obligation.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>16</sup> The person who filed the appeal, in this case, Mr. A., has the burden of proving by a preponderance of the evidence that the agency’s child support determination is incorrect.<sup>17</sup>

Mr. A.’s child support was set at \$731 per month in January 2008. In response to the petition for modification, CSSD extrapolated Alaska Department of Labor and Workforce Development information to estimate his annual income at \$70,890.53, and from that figure modify Mr. A.’s child support to \$927 per month.<sup>18</sup>

During the hearing, CSSD indicated Mr. A.’s actual 2008 income was \$53,167.90, not the higher figure the division estimated during the modification process. This actual income figure yields a support amount of \$718 per month.<sup>19</sup> This is only \$13 less than Mr. A.’s prior child support order and thus does not meet the necessary 15% change that would support a modification as of December 1, 2008.

In the alternative, Mr. A.’s child support may be modified as of May 1, 2009, the first month after he was laid off from D. D. and began working for T. E. at a lower wage. A modification made effective on that date is not prohibited by Civil Rule 90.3, which is primarily concerned that a modification does not take effect before the date upon which a notice of modification is distributed to the parties.<sup>20</sup> A child support amount calculated from Mr. A.’s estimated 2009 income of \$23,963.16 per year yields a support amount of \$367 per month.<sup>21</sup> This figure should be effective as of May 1, 2009, the first month after he changed jobs.

## **B. 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

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<sup>16</sup> 15 AAC 125.321(d). In this case, the notice was issued on November 6, 2008. Exh. 3.

<sup>17</sup> 15 AAC 05.030(h).

<sup>18</sup> Exh. 4 at pg. 6.

<sup>19</sup> See Attachment A.

<sup>20</sup> See Civil Rule 90.3(h)(2).

<sup>21</sup> See Attachment B.

injustice would result if the support award were not varied."<sup>22</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>[23]</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>24</sup>

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. A. 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 L. Mr. A.'s bills are minimal and moreover, his child support has been reduced to \$367 per month from \$731 per month. This should make it easier for Mr. A. to make the budgeting decisions necessary to pay his child support and cover his other bills at the same time.

#### **IV. Conclusion**

Mr. A. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His child support is now correctly calculated at \$367 per month, effective May 1, 2009 and that figure should be adopted. Mr. A. 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 from \$367 per month.

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

- Mr. A. is liable for modified ongoing child support in the amount of \$367 per month, effective May 1, 2009;

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

<sup>23</sup> Civil Rule 90.3(c)(1).

<sup>24</sup> See Civil Rule 90.3, Commentary VI.E.1.

- All other provisions of CSSD's March 31, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 6<sup>th</sup> day of July, 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 24<sup>th</sup> day of July, 2009.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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