

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

IN THE MATTER OF:)

C. E. T.)

) OAH No. 09-0386-CSS

) CSSD No. 001121731

DECISION AND ORDER

I. Introduction

This case involves the Obligor C. E. T.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 11, 2009. The Order added a third child, A., and set ongoing child support for three children at \$828 per month beginning August 1, 2008. The Custodian is E. M. T. The Obligee children are L., DOB 00/00/03; B., 00/00/04; and A., DOB 00/00/06.

The formal hearing was held on August 18, 2009. Mr. T. and Ms. T. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD.

Based on information not previously available to CSSD or known at the time of the June 2009 order, Mr. T.'s child support is set at \$50 per month for three children from August 2008 through May 2009 pursuant to civil Rule 90.3(c). Ongoing child support effective June 1, 2009 and is set at \$479 per month, which is suspended, but which will be reinstated in the event Mr. T. no longer has custody of the obligee children.

II. Facts

A. History

Mr. T.'s child support obligation for L. and C. was previously set at \$557 per month.¹ Ms. T. withdrew from services in June 2008.² CSSD initiated a modification review so as to add A. to the order.³ On July 14, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴

Mr. T. was incarcerated from August 2008 through December 2008. While he was incarcerated the children were removed from Ms. T.'s custody and placed in foster care. The

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

children remained in foster care until May 2009 when they were placed in Mr. T.'s custody. On June 11, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that added A. as an obligee and set Mr. T.'s ongoing child support at \$828 per month for three children effective August 1, 2008. Child support was calculated using Mr. T.'s actual reported income for 2008 plus the permanent fund dividend and unemployment insurance.

In July 2009, Mr. T. appealed this order arguing that he has custody of the children, he cannot afford to pay child support and he is on public assistance. He believes that if child support is necessary then CSSD should use his current income.

B. Material Facts

Mr. T. has a CDL⁵ and is presently employed as a commercial driver earning \$1,500 a month. In 2008, his total gross income was 36,599.47.⁶ When he was released from jail Mr. T. had no job and was living in a shelter. Since his release Mr. T. has held three jobs. At one job he was employed full time earning \$10-\$11 per hour before he was fired. He also held a position where he earned \$19 per hour. It is unclear whether this position was a temporary or whether Mr. T. was terminated. His present employment is full time and he earns \$1,500 a month as a commercial driver. As reported in Department of Labor records, in the first quarter of 2008, Mr. T. earned just over \$2,300.⁷

Mr. T.'s present income does not cover his monthly living expenses which are minimal. He lives with the three children in an apartment they rent for \$1,425 per month. The rent includes utilities excluding phone service for which he pays \$10 per month. His monthly expenses for transportation and insurance are minimal totaling approximately \$500. He receives food stamps and relies upon his church, friends, and charitable organizations to make up the difference and provide the remaining necessities such as diapers for A. Mr. T. receives no child support from Ms. T.

CSSD agrees that Mr. T. has had custody of the children since May 2009 and that child support should be suspended while Mr. T. has custody. CSSD advocated that from August 2008 through December 2008, child support should remain at \$828 because it is based on actual reported wages. From January 2009 ongoing CSSD believes child support should be based on

⁵ Commercial Driver's License (CDL).

⁶ Testimony of Mr. T.; Exhibit 5 at 6 (2008 reported department of Labor Wages, Unemployment Insurance and PFD).

⁷ As represented by CSSD and unchallenged by Mr. T.

what Mr. T. was earning at the time he was fired, \$10 per hour. This hourly rate results in a monthly ongoing child support payment for three children in the amount of \$538.⁸ As of June 2009, Mr. T.'s annual income is likely to be \$20,069.⁹ A child support amount for three children calculated from that income equals \$479 per month.¹⁰ This is less than a 15% change from a support payment of \$538 and for this reason CSSD believes child support for 2009 should remain at \$538 per month for three children and suspended while Mr. T. has custody.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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.¹² Ms. T. began receiving public assistance benefits on the children's behalf in August 2008, so pursuant to 15 AAC 125.105(a)(1)-(2) that is the first month for which CSSD may charge Mr. T. with child support.

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

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 determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct.

CSSD correctly calculated Mr. T.'s modified child support obligation for three children at \$828 per month, based on his actual income in 2008. It is from this figure that his request to reduce that amount is considered. CSSD does not oppose a reduction in Mr. T.'s modified child support obligation to reflect his 2009 earnings.

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

⁸ \$10 x 2080 hours = \$20,800; \$20,800 + \$2,069 PFD = \$22,869 Total Taxable Income. Attachment A.

⁹ \$1,500 x 12 months = \$18,000; \$18,000 + \$2,069 PFD = \$20,069 Total Taxable Income. Attachment B.

¹⁰ *Id.*

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 125.105(a)(1)-(2).

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^[13]

The Alaska Supreme Court holds that factors 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."¹⁴ 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).^[15]

In applying the above language to Mr. T.'s child support obligation, consideration should be given to the fact that the obligee children are now living with Mr. T., so any child support the obligor has to pay on this case would deprive the children of the support they should have as a member of Mr. T.'s household. This essentially makes the children bear the burden of the child support payment.

This case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. T. proved by clear and convincing evidence that manifest injustice would result if he were required to pay the full child support in this case. It makes little sense and it would be unjust to burden Mr. T.'s household by adding more child support debt to his current obligation to support the children in the home which he is unable to do at this time without assistance. Setting Mr. T.'s child support at \$50 per month from August 2008 through May 2009 constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). This should reduce his total child support owing to \$500, plus applicable fees and interest.

There is no ongoing support due because Mr. T. has custody of L., C. and A. 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. T. becomes liable for paying support in the future, CSSD can

¹³ Civil Rule 90.3(c)(1).

¹⁴ Citing *Coats v. Finn*, 779 P.2d 775, 777 (Alaska 1989).

¹⁵ *Doyle v. Doyle*, 815 P.2d 366, 373 (Alaska 1991).

begin income withholding much sooner than if the division has to initiate a modification procedure. Mr. T. is earning \$1,500 per month. A child support amount for three children calculated from that income equals \$479 per month effective June 2009 and ongoing.¹⁶

IV. Conclusion

Mr. T. presented evidence not previously available to CSSD and based on this evidence he has met his burden of proving by clear and convincing evidence that there is good cause in this case to set his child support at \$50 per month for the period from August 2008 through May 2009. Ongoing support will be set as of June 2009 at \$479 a month for three children, and suspended, so long as Mr. T. has custody of the obligee children.

V. Child Support Order

- Mr. T. is liable for modified child support in the amount of \$50 per month for three children from August 2008 through May 2009;
- Mr. T. is liable for modified ongoing child support in the amount of \$479 per month for three children, effective June 1, 2009, and ongoing;
- Ongoing support is suspended as of June 1, 2009 and it will remain suspended so long as Mr. T. has custody of the three children;
- All other provisions of CSSD's June 11, 2009, Modified Administrative Child Support and Medical Support Order remain in full and effect.

DATED this 24th day of August, 2009.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁶ Attachment B.

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 14th day of September, 2009.

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

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