

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

IN THE MATTER OF:)

E. A. A.)

OAH No. 09-0459-CSS

CSSD No. 001144444

DECISION AND ORDER

I. Introduction

This matter involves the Obligor E. A. A.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 3, 2009. The Obligee child is B., DOB 00/00/06.

The formal hearing was held on September 16, 2009. Mr. A. appeared by telephone; the custodian, G. L. G., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 23, 2009.

Based on the record as a whole and after careful consideration, Mr. A.'s child support is set at \$614 per month, effective June 1, 2008.

II. Facts

A. History

Ms. G. applied for and began receiving public assistance benefits on B.' behalf in June 2008.² Paternity was established by genetic testing and CSSD's administrative order.³ CSSD issued an Administrative Child Support and Medical Support Order and served it on Mr. A. on June 15, 2009.⁴ He requested an administrative review and provided income information.⁵ On August 3, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. A.'s ongoing child support at \$714 per month, with arrears of \$10,710 for the period from June 2008 through August 2009.⁶ Mr. A. appealed on August 19, 2009, asserting CSSD did not give him sufficient credit for the support he pays for his three prior children.⁷

¹ A call placed just before the hearing to Ms. G. telephone number went unanswered.

² Exh. 15 at pg. 6.

³ Exhs. 2 & 3.

⁴ Exh. 5.

⁵ Exhs. 6-14.

⁶ Exh. 15.

⁷ Exh. 16.

B. Material Facts

The material facts are not in dispute. Mr. A. and Ms. G. are the parents of B., who is three years old. B. is Mr. A.'s fourth and youngest child. His oldest child is M., who is 15 years old and lives with her mother, B. S., on the East Coast. Ms. S. is a single mother and works at two part-time jobs. When they first broke up many years ago, Mr. A. paid Ms. S. \$300 per month for M.'s support.⁸ He later increased the amount to \$400 per month, which he paid for at least five years, possibly as long as seven years.⁹ In January 2006, Mr. A. got a raise at work and consequently increased his child support for M. to \$500 per month and has maintained that amount up to the present.¹⁰ Neither Mr. A. nor Ms. S. has sought a court or administrative order for M.'s support. Rather, Mr. A. pays support for M. voluntarily according to his agreement with Ms. S. Mr. A. testified that Ms. S. relies on his child support payments.

Mr. A.'s other children are C., nine years old and D., six years old. These children live with their mother, E. L. A., who was granted custody of C. and D. in a divorce proceeding.¹¹ The court in that case ordered Mr. A. to pay \$705 per month for two children, effective September 1, 2005.¹² In January 2006, again because of his raise, Mr. A. voluntarily increased this payment to \$500 per month per child, which Ms. A. verified in a written statement.¹³ The A.s did not request a modification of the court's \$705 per month child support order, so it remains in effect in that amount.

Mr. A. works for the N. S. B. as Senior PC Network Technician. He earns \$32.35 per hour and is currently being considered for a promotion to LAN/WAN Support Specialist III that would increase his pay to a base rate of \$35.68 per hour. Mr. A. did not know when he would learn whether he had been promoted. In 2008, Mr. A. earned \$70,274.80.¹⁴

Nothing is known of Ms. G.'s circumstances. She did not provide an alternate telephone number to be called for the hearing and did not answer a call placed to her telephone number of record.

⁸ Hearing testimony of E. A. A.

⁹ *Id.*

¹⁰ See the Statement of B. S., Exh. 6 at pg. 5, and copies of the checks Mr. A. has written to her since September 18, 2006, Exh. 13, pgs. 1-29.

¹¹ Exh. 14 at pg. 3.

¹² Exh. 14 at pg. 4.

¹³ Exh. 6 at pg. 4.

¹⁴ Exh. 15 at pg. 7.

III. Discussion

A. Issue

Mr. A. is challenging CSSD's calculation of his support obligation for B. on two counts: 1) the division did not give him credit for the \$500 per month in child support he pays for his oldest child, M.; and 2) CSSD also did not credit him with the additional \$295 in support he pays for C. and D. over and above the \$705 per month ordered by the court. Mr. A. is not otherwise contesting CSSD's calculation of his monthly child support amount for B. As the person who filed the appeal in this case, Mr. A., has the burden of proving by a preponderance of the evidence that CSSD's calculations are incorrect.¹⁵

In its initial Administrative Child Support and Medical Support Order, CSSD only gave Mr. A. a deduction from income of \$705 per month, which is the amount of support the court ordered him to pay for C. and D. in 2005.¹⁶ CSSD did not give him the \$500 per month deduction for M. because he supports her pursuant to a private agreement with her mother, B.S.

After the hearing, CSSD filed a Post Hearing Brief in which it stated that the division would no longer oppose granting Mr. A. a deduction for the \$500 per month in child support he pays to Ms. S. on M.'s behalf. CSSD changed its position because neither Ms. S. nor Mr. A. had ever sought a court or agency order for support and Mr. A. had provided sufficient proof of the payments. However, CSSD's position has remained unchanged regarding the additional \$295 per month in child support that Mr. A. pays for C. and D. CSSD claims that Mr. A. is not entitled to the extra deduction because his support obligation for those children has been set by the court and the obligor made no attempt to modify the original \$705 per month court order when he voluntarily increased his child support payments for the children in January 2006.

Because CSSD is now willing to give Mr. A. a deduction from income for the \$500 per month child support payment he makes on M.'s behalf, only one issue remains in this appeal: whether the obligor is entitled to a deduction from income for the extra \$295 in child support he pays for C. and D.

B. Analysis

Civil Rule 90.3(a)(1)(C) provides that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction in that amount from the parent's

¹⁵ 15 AAC 05.030(h).

¹⁶ See Exh. 15 at pg. 7.

income in calculating the support obligation for a younger child. That provision of the rule requires that child support payments arising from prior relationships must be ordered by a court or administrative agency and they must actually be paid.¹⁷

Civil Rule 90.3 does not altogether ignore child support paid by an obligor parent voluntarily. The commentary to Civil Rule 90.3 provides that “support which is paid voluntarily without a court or administrative order may be considered under Rule 90.3(c),”¹⁸ which deals with “exceptions” to the general provisions of the rule that must be proven by “good cause.”¹⁹ If Mr. A. is entitled to the extra \$295 deduction for supporting C. and D., it would be under this provision.

Mr. A. made a good case for getting the extra \$295 per month deduction at issue, since he has been paying that amount voluntarily for C. and D. for over three years. CSSD made a point of complimenting him during the hearing and Mr. A. is to be commended for doing so. But CSSD’s position is legally correct. According to the specific language of the commentary, the support that is paid voluntarily must be “without a court or administrative order.”²⁰ This does not apply here. Mr. A. has a court order regarding his obligation to support C. and D., so the order controls and CSSD must comply with it. If Mr. A. obtains a modification to the order and pays that amount, CSSD will be obliged to deduct the entire figure from his income in calculating a child support amount for B. Until the order is modified, however, the obligor is not entitled to a deduction for the extra amount of support he pays for those two older children.

IV. Conclusion

Mr. A. met his burden of proving by a preponderance of the evidence that he pays support for three children older than B., the child in this case. Thus he is entitled to a deduction from income totaling \$1,205 per month. He is not entitled to a deduction for the \$295 he pays over and above the amount ordered by the court for C. and D. CSSD correctly calculated the obligor’s child support for B. at \$614 per month, based on his actual 2008 income and the deductions allowed herein. The child support amount should be adopted.

¹⁷ Civil Rule 90.3(a)(1)(C). Under this section, Mr. A. is entitled to the \$705 per month deduction for supporting C. and D. based on the court order.

¹⁸ Civil Rule 90.3, Commentary III.D. This is the section of Civil Rule 90.3 that CSSD acknowledges supports giving Mr. A. the \$500 per month deduction for supporting B. voluntarily.

¹⁹ Civil Rule 90.3(c).

²⁰ Civil Rule 90.3, Commentary III.D.

V. Child Support Order

- Mr. A. is liable for child support for B. in the amount of \$614 per month for the period from June 2008 through October 2009 and ongoing;
- All other provisions of the August 3, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 2nd day of October, 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 21st day of October, 2009.

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

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