

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

IN THE MATTER OF:)

J. C.)

OAH No. 09-0487-CSS

CSSD No. 001156710

DECISION AND ORDER

I. Introduction

The obligor, J. C., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on August 18, 2009. The Obligee child is A., who is 10 months old.

The formal hearing was held on October 5, 2009. Both Mr. C. and the custodian, N. F. S., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 13, 2009.

Based on the record and after careful consideration, Mr. C.’s child support is set at \$362 per month, effective December 1, 2008. His claim of financial hardship is denied.

II. Facts

A. History

Ms. S. applied for child support services on A.’s behalf in December 2008.¹ CSSD established Mr. C.’s paternity of the child on March 10, 2009.² On June 12, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. C.³ He requested an administrative review but did not provide income information.⁴ On August 18, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. C.’s ongoing child support at \$452 per month, with arrears of \$4,068 for the period from December 2008 through August 2009.⁵ Mr. C. appealed on August 27, 2009, asserting he has a medical

¹ Exh. 11 at pg. 6.

² Exh. 5.

³ Exh. 6.

⁴ Exh. 7.

⁵ Exh. 11.

bill that exceeds \$100,000, two other children to support and with his bills, he can only afford to pay \$200 per month.⁶

B. Material Facts

Mr. C. has been employed since the third quarter of 2007 at N. A. C., where he earns \$13.39 per hour. His earnings can vary from quarter to quarter by about \$2,500, but over the course of the last two years, they have remained fairly consistent and have been increasing gradually.⁷ Mr. C. earned \$18,838.65 in 2007, followed by \$29,399.83 in 2008.⁸ In the first quarter of 2009, Mr. C. earned \$9,089.15, which is his highest quarter of earnings thus far.⁹

If the pace of these income increases continues, Mr. C. may earn as much as \$30,000 per year in the near future. That will most likely not occur in 2009, however, because Mr. C. was hospitalized for two weeks with a serious medical condition in the spring of this year. The obligor reports he has fully recovered, but he did not have medical insurance and now faces a hospital bill in excess of \$100,000. Mr. C. claims he cannot afford to pay this bill, so he anticipates filing for bankruptcy if he cannot get financial aid from the hospital.

Mr. C. and his girlfriend, V., have two children, J. and M. J. is older than A., the child in this case. V., who is going to school to become a medical assistant, works part-time and helps pay the bills. The family lives with V.'s mother. They pay her \$300 per month for rent, food and babysitting. Mr. C.'s other monthly bills consist of \$125 for diapers and formula; \$80 for a cell phone; \$250 for the payment on a 2000 Volkswagen Jetta; \$503 for the payment on a 2004 Nissan Frontier; \$160 for gasoline; \$200 for vehicle insurance; \$50 for the payment on a credit card; and \$60 for the payments on approximately 8-12 medical bills (\$5 each).¹⁰

Ms. S. works at two part-time jobs and brings home approximately \$1,200 – \$1,400 per month. She has a roommate, pays \$450 per month for rent and her other expenses are not unusual. Ms. S.'s relatives provide child care. She was previously going to school but now has an unpaid debt of \$2,200 for educational expenses, so Ms. S. will wait until A. is older to return to school.

⁶ Exh. 16.

⁷ See Exh. 14.

⁸ *Id.*

⁹ *Id.*

¹⁰ Exh. 17.

III. Discussion

A. Mr. C.'s income

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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," minus mandatory deductions such as taxes and Social Security. A parent who supports an older child in the home is entitled to an additional deduction.¹² The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹³

As the person who filed the appeal in this case, Mr. C. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁴

At the close of the hearing, CSSD was directed to prepare up-to-date calculations for 2008 and 2009. As directed, CSSD performed additional calculations, both of which incorporate Mr. C.'s testimony that he supports a child older than A. in the home. CSSD used his actual income figures for 2008 to calculate his child support obligation for the month of December 2008, the effective date of this obligation.¹⁵ The calculation includes an additional deduction from income for supporting a prior child in the home of \$452 per month,¹⁶ and it results in a child support amount of \$362 per month.¹⁷

CSSD also prepared a calculation for 2009 based on its estimate that he would earn a total of \$27,682.37 during the year. This estimate is lower than his actual 2008 income, but it is explained by Mr. C.'s hospitalization and lower quarterly income in early 2009. Again inserting an additional deduction from income, this time \$403 per month based on Mr. C.'s 2009 income, CSSD determined Mr. C.'s child support for 2009 would be \$323 per month.¹⁸

CSSD correctly asserted that the child support amount for 2009 should be left at \$362 per month, the 2008 figure. This is based on the authority in CSSD regulation 15 AAC 125.105(e),

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

¹² Civil Rule 90.3(a)(1)(C).

¹³ *Id.*

¹⁴ 15 AAC 05.030(h).

¹⁵ Exh. 19 at pgs. 1-2.

¹⁶ *See* Exh. 19 at pg. 2.

¹⁷ Exh. 19 at pg. 1.

which states in essence that after CSSD has calculated a parent's support obligation for the first year, it need not adjust the support amount for following years unless the parent's income would cause the calculation to be 15% higher or lower than the original amount. Since \$323 per month is less than a 15% change from \$362 per month, the latter figure should also apply to 2009.

B. Financial hardship

Mr. C.'s child support is now correct and the obligor testified that he cannot afford the modified child support amount and requested a variance due to 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 injustice would result if the support award were not varied."¹⁹ 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^[20]

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).²¹

Based on the evidence presented, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. C. 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. While it is true that Mr. C. has a hospital debt over \$100,000, he testified at the hearing that he anticipates filing for bankruptcy, thus possibly eliminating this debt.

An examination of Mr. C.'s expenses checklist reveals that, with the exception of the \$503 per month payment on the Nissan Frontier, his monthly living costs are relatively low

18 Exh. 20 at pgs. 1-2.

19 Civil Rule 90.3(c).

20 Civil Rule 90.3(c)(1).

21 See Civil Rule 90.3, Commentary VI.E.1.

because he and V. and their children live with V.'s mother. The expense of having this second car should not deprive the child A. of support. Mr. C. may have to make some lifestyle changes in order to make ends meet, but he did not establish "good cause" to vary the child support amount from CSSD's calculations under Civil Rule 90.3.

IV. Conclusion

Mr. C. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He is entitled to an additional deduction for supporting a prior child in the home. When this is incorporated into the child support calculation, Mr. C.'s actual income for 2008 yields a child support amount of \$362 per month.

Mr. C. did not meet his burden of proving by clear and convincing evidence that manifest injustice would result if his child support amount calculated under Civil Rule 90.3 were not varied. CSSD correctly calculated his child support at \$362 per month, which should be adopted.

V. Child Support Order

- Mr. C. is liable for child support for A. in the amount of \$362 per month for the period from December 2008 through October 2009 and ongoing;
- All other provisions of the August 18, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 23rd 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 9th day of November, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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