

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

IN THE MATTER OF:)

P. N. N., SR.)

) OAH No. 09-0536-CSS

) CSSD No. 001156048

DECISION AND ORDER

I. Introduction

This case involves the Obligor P. N. N., Sr.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 23, 2009. The Obligees children in this case are L. and S., who are 7 and 6 years of age, respectively.

The formal hearing was held on October 29, 2009. Mr. N. appeared in person. The custodian for purposes of this appeal is the State of Alaska; L. and S. are in non-federal foster care placement. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on December 1, 2009.

Based on the record and after careful consideration, Mr. N.'s child support is set at \$200 per month, effective July 1, 2008, and ongoing, pursuant to Civil Rule 90.3(c).

II. Facts

A. Procedural Background

L. and S. were placed in non-federal foster care in July 2008.¹ On July 21, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. N.² He requested an administrative review and provided income information.³ On September 23, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. N.'s ongoing child support at \$715 per month, with arrears of \$10,725 for the period from July 2008 through September 2009.⁴ Mr. N. filed an appeal on September 30, 2009 that said his income is lower than CSSD estimated and he is getting the children back from foster care.⁵

¹ Exh. 7 at pg. 7.

² Exh. 3.

³ Exhs. 2, 4 & 6.

⁴ Exh. 7.

⁵ Exh. 11.

B. Material Facts

Mr. N. is the father of L. and S., 7 and 6 years of age, who were placed into foster care in July 2008.⁶ Mr. N.'s plan is for the children to return to his home in the near future. According to the Office of Children's Services (OCS), L. and S. had an overnight visit with Mr. N. on October 29, 2009, and a weekend visit on November 7-9, 2009.⁷ A "trial home visit" designed to lead to Mr. N.'s reunification with the children was slated to begin on November 14, 2009, and OCS estimated that the state's custody of the children "probably" would be dismissed within 6 months.⁸ Mr. N. testified that he had given the foster parents \$2,000 directly, but he did not have any documentation of those payments.

Mr. N. is a tow truck driver currently earning \$12 per hour for full-time work and \$18 per hour for overtime.⁹ He earned \$35,068 in 2008.¹⁰ A child support obligation calculated from Mr. N.'s 2008 earnings and the PFD equals \$715 per month for two children and \$530 per month for one child.¹¹

As of November 11, 2009, Mr. N.'s 2009 year-to-date earnings were \$27,552.¹² Mr. N.'s paystubs from October 14th, October 28th and November 11th averaged \$1,157 per pay period.¹³ CSSD estimated he would have three more pay periods remaining in 2009, so the agency added \$3,471 (\$1,157 x 3) to his year-to-date income to estimate his total annual income at \$31,023 for 2009.¹⁴ A child support obligation calculated from these earnings and the PFD equals \$602 per month for two children and \$446 per month for one child.¹⁵

Mr. N.'s regular expenses total approximately \$2,108 per month, which includes \$1,000 for rent; \$800 for food; \$100 for gasoline and vehicle maintenance; \$96 for gas and electricity; \$58 for internet and a lifeline cell phone; and \$54 for vehicle insurance.¹⁶ Mr. N. has debts totaling about \$2,884,50, one of which is for telephone service that has been turned off, and one

6 Exh. 9.

7 *Id.*

8 *Id.*

9 Exh. 6.

10 Obligor's Exhibit 12 at pg. 4, filed on October 26, 2009.

11 Exh. 7 at pg. 6.

12 Exh. 10 at pg. 2.

13 *Id.*

14 Post-Hearing Brief at pg. 1.

15 Exh. 11.

16 Exh. 10 at pg. 1.

of which is for an IRS debt of \$2,000.¹⁷ Mr. N.'s adult daughter, S., and her 10 month-old child also live with him.¹⁸

III. Discussion

A. *Mr. N.'s Income*

A parent is obligated both by statute and at common law to support his or her children.¹⁹ 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).²⁰ In this case, L. and S. began receiving foster care services in July 2008, so that is the first month Mr. N. is obligated to pay support in this administrative child support action.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. The support amounts set forth in the facts section above are correct. The 2008 calculation of \$715 per month is based on Mr. N.'s actual income for 2008; the 2009 calculation of \$602 per month is based on his November 11th year-to-date income plus a small amount extrapolated from his paystubs to estimate his total 2009 earnings. Thus, as calculated by CSSD for the period from July 2008 through December 2009, Mr. N.'s arrears total \$11,514.²¹

B. *Financial Hardship*

The primary issue in this appeal is whether Mr. N. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). 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

¹⁷

Id.

¹⁸

Id.

¹⁹

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

²⁰

15 AAC 125.105(a)(1)-(2).

²¹

$(\$715 \times 6 = \$4,290) + (\$602 \times 12 = \$7,224) = \$11,514.$

amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[22]

The Alaska Supreme Court holds that factors such as 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.”²³ 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).^[24]

Based on all the evidence, this case presents unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. N. proved by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amounts calculated under Civil Rule 90.3. Mr. N. already does not have sufficient income with which to pay all of his bills and his child support obligation as calculated. On top of that, the children are currently being re-integrated into Mr. N.’s home with the obvious result being higher food and other costs to support them. It makes little sense and it would be unjust to burden Mr. N.’s household by adding more child support debt to his obligation to once again support L. and S. in the home. Ultimately, this simply reduces the amount of money available to support them. Setting Mr. N.’s child support at \$200 per month constitutes a reasonable measure of his ability to pay support under Civil Rule 90.3(c). This should reduce his total arrears to \$3,600, plus applicable fees and interest, and CSSD’s regulations indicate the total amount will be collected at approximately \$175 per month.²⁵

An ongoing child support amount will be included in this order, but if Mr. N.’s children are still living with him he should notify CSSD as soon as possible so the ongoing amount can be suspended. In the event L. and S. for some reason do not remain in Mr. N.’s home after this trial reunification, Mr. N.’s support obligation should be reviewed for a possible modification.

22 Civil Rule 90.3(c)(1).

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

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

25 15 AAC 125.545(a).

IV. Conclusion

Mr. N. met his burden of proving by clear and convincing evidence that manifest injustice would result in the absence of a variation of the child support amount. Based on the evidence as a whole, his child support should be set at \$200 per month from July 2008 forward.

V. Child Support Order

- Mr. N. is liable for child support in the amount of \$200 per month for the period from July 2008 through December 2009, and ongoing;
- All other provisions of the September 23, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 21st day of December, 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 8th day of January, 2010.

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

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