

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

IN THE MATTER OF:)	
)	OAH No. 09-0626-CSS
E. J. P.)	CSSD No. 001158420
_____)	

DECISION AND ORDER

I. Introduction

This matter involves the Obligor E. J. P.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 27, 2009. The Obligee children are A., B. and C., who range in age from nine to three years of age.

The formal hearing was held on December 17 & 30, 2009. Both Mr. P. and the custodian, M. M. T., appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 8, 2010.

Based on the record as a whole and after careful consideration, Mr. P.'s child support is set at \$400 per month, based on the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. History

Ms. T. applied for child support services on April 7, 2009.¹ On August 28, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. P.² He requested an administrative review and provided income information.³ On October 27, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. P.'s ongoing child support at \$689 per month for three children, with arrears of \$4,823 for the period from April 2009 through October 2009.⁴ Mr. P. appealed on November 2, 2009.⁵

¹ Exh. 1.
² Exh. 3.
³ Exhs. 4-6.
⁴ Exh. 8.
⁵ Exh. 9.

B. Material Facts

Mr. P. has two part-time jobs. His primary employment is with A. T., which is a moving company. He is paid \$15 per hour and works from 15 to 40 hours per week, primarily in the morning shift. His employer provided a letter that indicates that the hours available for Mr. P. to work "dramatically decrease" during the winter months.⁶ Mr. P.'s second job is with Alaska I. H., where he is a night warehouse stocker. He has been earning \$10.50 per hour since November 2009, a \$.50 raise from his hourly wage during most of 2009. Mr. P. was previously employed by S. M. S., but he was laid off from that company in 2008. CSSD estimated Mr. P.'s 2009 earnings at \$28,147.18, plus the permanent fund dividend and \$595 of unemployment benefits, all of which total \$30,047.18.⁷ Mr. P. did not challenge this estimate of his 2009 income. A child support amount calculated for three children based on these earnings is \$689 per month.⁸

Mr. P. and his wife, R., have a one year-old child in the home and the birth of their second child is imminent. R. is a certified nurse assistant and previously brought home about \$1,500 per month, but she plans to remain off work for up to two years. Now that she is unemployed, R. does not have health insurance and Mr. P. cannot afford to purchase insurance for her through his work. She is currently receiving Medicaid benefits, but they will terminate six weeks after the baby is born. R. is a diabetic who normally takes oral medications to control her diabetes, but now with her pregnancy, she has to take insulin. Also, R. does not drive, so Mr. P. has to provide her transportation for medical appointments. R.'s sister is also available to help occasionally with transportation.

Mr. P. listed regular monthly expenses of \$2,640, which includes \$850 for rent; \$600 per month for food; \$150- \$200 for utilities; \$330 for the payment on a 2005 Chevrolet Trailblazer; \$200 for gasoline; \$185 for vehicle insurance; \$60 for cable; and \$100 for a credit card payment.⁹ In addition to these expenses, Mr. P. owes the IRS \$500-\$600, but he expects that this debt will be paid off when he files his next tax return.

Ms. T. is employed full-time as a personal care attendant earning \$10.75 per hour. She lives with her fiancé, W., who is a full-time civilian employee of the United States Army. Ms.

⁶ Exh. 12 at pg. 26.

⁷ Exh. 8 at pg. 6.

⁸ *Id.*

⁹ Exh. 12 at pgs. 3-4.

T.'s grandmother also lives in the home and receives Social Security benefits. The custodian and the obligee children receive free medical and dental benefits at the Alaska Native Medical Center. Ms. T. estimated that food for herself and the children alone totals between \$300-\$400 per month.

III. Discussion

Mr. P. filed an appeal to request that he be granted a financial hardship variance from the child support determination based on the "unusual circumstances" provisions of Civil Rule 90.3(c). He did not contest CSSD's calculation of his monthly child support amount, but he claims that without a variance he and his family will become homeless.

A parent is obligated both by statute and at common law to support his or her children.¹⁰ This obligation begins when the child is born.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. requested child support services in April 2009, so that is the first month for which Mr. P. is obligated to pay support for A., B. and C. through CSSD. The person who filed the appeal, in this case, Mr. P., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹³

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

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹² 15 AAC 125.105(a)(1)-(2).

¹³ 15 AAC 05.030(h).

amount of support which is just and proper for the parties to contribute toward the nurture and education of their children^[14]

It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child(ren), to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).¹⁵

Technically, there is no official recognition of Mr. P.'s younger child(ren) that would result in the reduction of his child support obligation. In general, Civil Rule 90.3 states that a parent's child support obligation should not be reduced because that parent has younger children.¹⁶ This is because a parent has the choice not to start a second family if he or she cannot support the children from his or her first family. However, the commentary to the rule also states that the court or administrative tribunal "should reduce child support if the failure to do so would cause substantial hardship to the 'subsequent' children."¹⁷

Mr. P. does not have sufficient income with which to pay all of his bills and his child support obligation as calculated. His wife R. has been contributing to the household financially but her income has been temporarily halted because of her most recent pregnancy. She does not plan to return to work for two years, but she may have to go back earlier, given their finances. If daycare assistance is not available to them, most, if not all, of her income will be necessary just to provide for childcare and the family will be in essentially the same position financially. Most of the expenses Mr. P. listed on the hardship form appear to be reasonable and there does not appear to be much he can do to reduce his expenses. Since they have only one car, Mr. P. will have to keep that vehicle in order to provide necessary transportation for the family.

Ms. T.'s situation is not as critical. Both adults in her home are working and Ms. T. and the obligee children receive free medical and dental benefits. In addition, the custodian's grandmother receives financial support via Social Security benefits. Thus, on balance, Ms. T. is somewhat more able to absorb an adjustment in the child support amount calculated pursuant to Civil Rule 90.3.

Based on the evidence as a whole, Mr. P. has proven by clear and convincing evidence that manifest injustice would result if his child support were not varied from the amounts

¹⁴ Civil Rule 90.3(c)(1).

¹⁵ Civil Rule 90.3, Commentary VI.B.

¹⁶ Civil Rule 90.3, Commentary VI.B.2.

¹⁷ *Id.*

calculated pursuant to Civil Rule 90.3. Without an adjustment, there is clear and convincing evidence that Mr. P.'s subsequent children will suffer substantial hardship because he will be unable to pay all of his household expenses and will be in danger of losing the family's housing.

Therefore, Mr. P.'s child support should be set at \$400 per month. This reduction from \$689 per month relieves some of the current financial burden on Mr. P., but at the same time provides Ms. T. with financial support for the children. It should be noted, however, that Mr. P.'s current situation is temporary. His child support obligation should not remain at \$400 per month indefinitely because R. most likely will be returning to work in the future. Thus, it may be advisable to consider a modification action at that time so that Mr. P.'s child support obligation can be calculated from his actual income.

IV. Conclusion

Mr. P. met his burden of proving by clear and convincing evidence that unusual circumstances exist in this case and that manifest injustice would result if his child support obligation were not varied from the amounts calculated by CSSD. A child support amount of \$400 per month represents a balance of the totality of the circumstances of both parties and it should be adopted.

V. Child Support Order

- Mr. P. is liable for modified child support for A., B. and C. in the amount of \$400 per month, effective April 1, 2009, and ongoing;
- All other provisions of the October 27, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 28th day of January, 2010.

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 16th day of February, 2010.

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

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