

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

IN THE MATTER OF:)	
)	OAH No. 08-0565-CSS
J. A. S., JR.)	CSSD No. 001094655
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, J. A. S., Jr., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on September 18, 2008. The Obligee child is J., DOB 00/00/94.

The hearing was held on October 29, 2008. Both Mr. S. and the custodian, K. L. W., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 24, 2008.

Based on the record and after careful consideration, Mr. S.’s modified ongoing child support is set at \$346 per month for one child, effective June 1, 2008.

II. Facts

A. Procedural history

Mr. S.’s child support obligation for J. was set at \$289 per month in March 2003.¹ Ms. W. requested a modification on May 3, 2008.² On May 19, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. S. did not provide financial information as requested by CSSD.⁴ The agency received his earnings history from the state of Arizona and used it to modify his child support obligation.⁵ On September 18, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. S.’s modified ongoing child support at \$488 per month, effective June 1, 2008.⁶ Mr. S. appealed on

¹ Exh. 1.

² Exh. 3.

³ Exh. 4. Mr. S. had moved and not received the notice in time to provide financial information before CSSD’s order modifying his child support was issued.

⁴ Pre-hearing brief at pg. 1.

⁵ Exh. 5.

⁶ Exh. 6.

October 15, 2008, asserting essentially that he supports two other children and he cannot afford to pay the modified amount that CSSD calculated.⁷

B. Material facts

Mr. S. and Ms. W. are the parents of J., DOB 00/00/94. Mr. S. lives in Arizona; Ms. W. lives in Alaska and has primary custody of the child.

Mr. S. works for an Arizona subcontractor installing residential heating and cooling units. Mr. S. earns \$16.75 per hour and typically works between 30 and 40 hours per week. He pays into a retirement fund and pays mandatory union dues to the Arizona Sheet Metal Union #591.

Mr. S. and his partner, L. G., have lived together for seven years. They have two children in the home, both of whom are younger than the obligee J., the subject of this child support case. Ms. G. is employed and brings home approximately \$1,600 per month; they share household costs. Mr. S.'s regular monthly expenses include \$700 for rent; \$350 for food; \$150 for home and cell phones; \$100 for gasoline; \$70 for vehicle insurance; and \$50 for personal care items. Mr. S. does not have any credit card debt.⁸

Ms. W. reports income of \$18,374 per year, including the PFD. She also earns tips at her place of employment.⁹ Her household expenses include \$1,300 for the mortgage payment; \$100 for food; \$100 for natural gas; \$50 for water service; \$130 for cell phone, Internet and cable service; \$150 for electricity; \$380 for the payment on a Dodge pickup; \$100 for gasoline; \$100 for automobile insurance; \$120 for entertainment; \$500 for personal care items; \$50 for tobacco; and \$289 for the minimum payment on her \$11,000 credit card debt. In addition, Ms. W. has provided J. with braces at the cost of \$1,500 out of pocket, and she indicated that he also has to have a surgical procedure that costs \$3,000, but which is not provided by the Alaska Native Medical Center or covered by insurance.

III. Discussion

Mr. S.'s appeal raises two issues: the correct level of income for the child support calculation; and whether he is entitled to a reduction in his child support based on a financial hardship.

⁷ Exh. 8.

⁸ Exh. 10.

⁹ Ms. W.'s unnumbered exhibits, at pg. 5, which were received on October 27, 2008.

A. Income

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹¹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a material change in circumstances has occurred.

Mr. S. has been paying child support for J. in the amount of \$289 per month since March 2003. After the modification request was received in May 2008, CSSD calculated his modified child support at \$488 per month, based on his hourly wage of \$16.75 per hour for full-time work, which resulted in earnings of \$34,840.¹² At the hearing, CSSD acknowledged that the 2008 PFD amount should not have been included in Mr. S.'s child support calculation because he is not a resident of Alaska. Also, CSSD indicated Mr. S.'s pay stubs prove that he does not always work 40 hours per week so the agency was willing to prepare a revised child support amount based on his 2007 federal income tax return.

CSSD filed a post hearing brief on November 13, 2008. It contains Mr. S.'s 2007 tax return, which CSSD used, in addition to his documentation regarding union dues and state income tax. CSSD calculated a revised child support amount for Mr. S. of \$346 per month.¹³

B. Financial Hardship

The second issue in this appeal is whether Mr. S. is entitled to a reduction in his child support obligation based on a financial hardship, pursuant to Civil Rule Civil Rule 90.3(c). CSSD correctly calculated Mr. S.'s child support at \$346 per month, based on his total income for 2007. It is from this calculation that Mr. S.'s request for a variance based on financial hardship should be considered.

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

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

¹¹ AS 25.27.190(e).

¹² Exh. 7.

¹³ Exh. 16.

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 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, 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).¹⁵

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Mr. S. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not reduced. Mr. S.'s financial situation is somewhat strained because he does not always work a full 40 hours per week, plus he supports two younger children in the home. However, having monthly living expenses or debts that exceed one's net income does not automatically entitle a parent to a reduction in the child support calculated pursuant to Civil Rule 90.3. Mr. S.'s partner contributes to the household income, which helps provide the support for their two younger children. Mr. S. may have to increase his hours at work or even find a second job, but his situation does not constitute “unusual circumstances” that warrant a variation in his child support obligation. Also, it should be noted that CSSD's revised calculation reduced the modified child support amount from \$480 per month to \$346 per month. As a result, the net increase in Mr. S.'s child support is only \$57, from \$289 to \$346 per month.

Thus, in the absence of clear and convincing evidence of manifest injustice, I cannot conclude that good cause exists to vary Mr. S.'s child support amount.

IV. Conclusion

Mr. S. met his burden of proving that CSSD's determination of his child support obligation was incorrect in the Modified Administrative Child Support and Medical Support

¹⁴ Civil Rule 90.3(c)(1).

¹⁵ See Civil Rule 90.3, Commentary VI.E.1.

Order. His modified child support, effective June 1, 2008,¹⁶ is now correctly calculated at \$346 per month based on his actual income figures from 2007 and this figure should be adopted.

V. Child Support Order

- Mr. S. is liable for modified ongoing child support for J. in the amount of \$346 per month, effective June 1, 2008;
- All other provisions of CSSD's September 18, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 13th day of March, 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 31st day of March, 2009.

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

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

¹⁶ A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). CSSD sent the parties a notice of the modification on May 19, 2008. Exh. 4. Mr. S. complained that he did not receive a timely notice, but he already had an ongoing child support case and was obligated to keep CSSD informed of his current address. See Exh. 17 at pg. 5.