

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

IN THE MATTER OF: )

L. M. J. )  
\_\_\_\_\_)

OAH No. 10-0388-CSS  
CSSD Case No. 001161980

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of L. J. for the support of K. M. S., Jr. The putative custodian is K. S.

On June 16, 2020, the Child Support Services Division issued an amended administrative child support order establishing Ms. J.'s support obligation. Ms. J. filed an appeal and requested an administrative hearing. The case was referred to the Office of Administrative Hearings and the administrative law judge conducted a telephonic hearing on August 24, 2010. Andrew Rawls represented the division. Ms. J. participated. Mr. S. did not contact the Office of Administrative Hearings and was not available at his telephone number of record.

**II. Facts**

L. J. has been the primary custodian of her son, K. S., Jr., since 1997, when the Child Support Services Division issued a support order establishing a support obligation of \$50 per month on the part of the boy's father, K. S.

In the summer of 2008, K., Jr., spent a few weeks visiting his father in Juneau. During that time, the child received state medical assistance and an administrative child support proceeding was initiated to obtain support from Ms. J. While that administrative proceeding was pending, in August, 2008, K., Jr., returned from his visit with his father and resumed living with his mother in No Name City. He attended school in No Name City for the entire 2008-2009 school year.

Beginning in the summer of 2009, K., Jr., spent about three months with his father, and he briefly enrolled in the Juneau School District. However, in October, the child returned to No Name City and resumed living with his mother. He was enrolled in the No Name City schools and lived with his mother for the remainder of the 2009-2010 school year.

### **III. Discussion**

In this case, Ms. J. has been K. S., Jr.'s primary custodian since 1997. For a couple of weeks in the summer of 2008, her son visited his father. In 2009, her son again visited his father for about three months, including about two months during which he attended school in Juneau.

There was no formal custody order in effect during this period. Thus, the parents' respective support obligations are determined by actual custody. For both calendar years, 2008 and 2009, K., Jr., was in his mother's custody for at least 70% of the time. As the actual custodian for that amount of time, and in the absence of a formal custody order, Ms. J. is deemed the primary custodian for the entire year.

The division, on behalf of the state, may seek reimbursement for public assistance benefits paid "to a child to whom the obligor owes a duty of support."<sup>1</sup> As the primary custodian throughout 2008-2010, Ms. J. discharged her duty of support, and in the absence of a request for services from Mr. S., the division did not have a basis to establish a support obligation against her. Moreover, even if the division did have grounds to establish a support obligation, an order for arrears would not be in the child's best interests. Ms. J., not Mr. S., has been the primary custodian since 1997, including for the past two years and continuing. To enter an order for payment of arrears at this time would mean taking money from Ms. J. that would otherwise be available for the ongoing support of her son, at a time when the child's father is subject to only a minimal support order. Under these circumstances, entry of an order for arrears is not in K., Jr.'s best interests and would be contrary to the primary purpose of child support proceedings.<sup>2</sup>

### **IV. Conclusion**

Because Ms. J. is the primary custodian, no child support order should be issued against her at this time.

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<sup>1</sup> AS 25.27.120(a); -.130(a)(2).

<sup>2</sup> See, e.g., Bennett v. Bennett, 6 P.3<sup>rd</sup> 724, 727-728 (Alaska 2000).

## ORDER

The Administrative Child Support and Medical Support Order dated March 27, 2010, and the Amended Administrative Child and Medical Support Order dated June 16, 2010, are **VACATED**.

DATED: August 26, 2010

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
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.

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 15th day of September, 2010.

By: *Signed* \_\_\_\_\_  
Signature  
*Andrew M. Hemenway* \_\_\_\_\_  
Name  
*Administrative Law Judge* \_\_\_\_\_  
Title

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