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

IN THE MATTER OF:	)	
	)	OAH No. 11-0035-CSS
D. W. F.	)	CSSD No. 001166077
	)	

DECISION AND ORDER

I. Introduction

The obligor, D. W. F., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 30, 2010. The obligee child is H., aged one year. The custodian of record is J. C. J.

The formal hearing was held on March 8, 2011. Mr. F. appeared by telephone; Ms. J. did not participate.[1] Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. F.'s child support obligation from May 2010 through December 2010 is vacated. Mr. F. is, however, liable for support in the amount of $255 per month, effective January 1, 2011, and ongoing, until such time as he and Ms. J. and H. are once again living in the same household.

II. Facts

A. History

Ms. J. received public assistance for H. for four months, from May 2010 through August 2010.[2] CSSD initiated the process of establishing Mr. F.'s child support obligation by requesting financial information from him and issuing an administrative child support order on November 1, 2010.[3] He requested an administrative review, after which CSSD issued an Amended Administrative Child and Medical Support Order on December 30, 2010, that set Mr. F.'s ongoing child support at $255 per month, with arrears of $1,472 from May 2010 through

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[1] Before the hearing was held in this appeal, both parties appeared by telephone for two status conferences, the second one just two weeks before the hearing. When Ms. J. did not answer her telephone for the hearing, Mr. F. testified she told him she was not going to participate. However, after the hearing Ms. J. filed documents stating she could not appear for the hearing because her home telephone had been turned off.

[2] Pre-Hearing Brief at pg. 1; Exh. 4 at pg. 8.

[3] Pre-hearing brief at pg. 1; Exh. 1.

December 2010.[4] Mr. F. appealed on January 21, 2011, asserting that "other than a couple of weeks in the summer when J. moved back with her parents on K. Road, she has been living with me since before H. was born."[5]

A. Material Facts

Based on the record as a whole, the following facts are established by a preponderance of the evidence based on the testimony of Mr. F. and his mother, R.F.-G., in addition to the documents submitted into evidence by both parties:

Mr. F. and Ms. J. are the parents of H., who is one year old. Prior to H.'s birth, the parties lived together in Ms. J.'s apartment on C. Street in Fairbanks. In May 2010, Mr. F. purchased property on B. Road. Toward the end of May, the parties moved there together and cohabitated as a family. Ms. J. moved out of the home sometime during the summer of 2010 and moved in with her parents. This occurred possibly between the end of July and September, but Ms. J. was gone for only about two weeks and returned to live with Mr. F. at that time. She and H. remained there until mid December 2010, at which time they moved out. Mr. F.'s mother testified that Ms. J. was moving back in with Mr. F. as of the first week of March 2011 because the parties had borrowed a trailer from her for Ms. J.'s move.

At the hearing, Mr. F. testified that he and Ms. J. are currently engaged and are planning to get married in May 2011. He also testified that he made a payment to Ms. J. in the amount of $1,600, which she verified with a written statement submitted on March 2, 2011.[6]

III. Discussion

Mr. F. requested the formal hearing in this matter. He is not challenging the calculation of his support obligation, only the arrears that have been assessed for time periods beginning in 2010. As the person who filed the appeal, Mr. F. has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.[7]

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4 Exh. 4.

5 Exh. 5 at pg. 1.

6 Exh. 8.

7 15 AAC 05.030(h).

A parent is obligated both by statute and at common law to support his or her children.[8] In cases established by CSSD, the agency 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 the date the action was initiated.[9] Ms. J. received public assistance on H.'s behalf for four months beginning in May 2010, so that is the month in which Mr. F.'s obligation to support his child through CSSD should begin.[10]

In this case, however, Mr. F. has met his burden of proving by a preponderance of the evidence that the amended administrative child support order is incorrect. Mr. F. presented his own testimony and requested that his mother, R. F.-G., also be called to testify. The obligor's mother verified that her son and Ms. J. lived together through most of 2010 – at first in her apartment on C. Street in Fairbanks and then as of May 2010, at his home on B. Street – and that she did not move out of his home until mid-December 2010. Ms. F.-G. also confirmed that the parties lived separately until just prior to the hearing in March 2011, at which time they borrowed a trailer from her for Ms. J. to move back in with him. Mr. F. testified that he and Ms. J. have applied for a marriage certificate and plan to be married in May 2011. Ms. F.-G. confirmed that her son and Ms. J. are engaged.

Ms. F.-G. was particularly credible. During her testimony, she was asked multiple open ended questions about the parties' residences and movements going back to early 2010. Even though the questioning skipped back and forth between 2010 and 2011, Ms. F.-G.'s answers were spontaneous and consistent and there was no indication that her testimony was coached or practiced.

In contrast, the evidence Ms. J. submitted was inconsistent. For example, she submitted a letter dated December 20, 2010, that indicated:

> "I have not lived with D., nor have my children, including our daughter H. F. We did stay with D. at his residence for *the month of September*. I do have receipts from mortgage [sic] and cost of heating oil . . . ."[11]

Yet Ms. J. submitted a letter after the hearing that said she lived with Mr. F. in his trailer from *September 2010 through December 2010,* at which time she was "forced to move out" because

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

9 15 AAC 125.105(a)(1)-(2).

10 *See* Exh. 4 at pg. 8.

of their problems.[12] Ms. J. has damaged her credibility by filing these two inconsistent statements. Moreover, after the hearing she requested that the record in this appeal remain open "due to my home phone being shut off and me, J. J., being unable to be reached."[13] Ms. J.'s assertion that she was not able to be reached is false. Mr. F. testified that it was her choice not to participate in the hearing. When asked if he had any way to contact her, he provided her cell phone number, which was called during the hearing and the administrative law judge was able to leave a message for Ms. J. on her voicemail. She obviously received the message because she submitted her documents by facsimile later that day. Clearly, Ms. J. was able to be reached and easily could have contacted the OAH with her cell phone number to be called for the hearing or she could have asked Mr. F. to provide it at the beginning of the hearing so she could be contacted.

It must be emphasized that Ms. J.'s choice not to participate in the hearing is not being criticized. It is a common occurrence in child support hearings for one party or the other not to appear. However, it is the apparent untruthful reason she gave for not being able to be reached because her home phone was shut off, combined with the inconsistency between the two statements she submitted regarding whether and when she cohabitated with Mr. F., that lead to the conclusion that Ms. J. is not credible. As a result, her statements should be given little evidentiary weight. Mr. F. is more credible and his version of the parties' living arrangements should be adopted.[14]

Thus, based on the record as a whole, Mr. F. proved that he, Ms. J. and H. all cohabitated from May 2010 until mid-December 2010. Mr. F. was a custodial parent during that time, so he is not liable for child support for H. for those months. Ms. J. and H. moved out in December 2010, so he is obligated to pay support for H. from January 2011 forward. The obligor and his

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11 Exh. 3 (emphasis added).

12 Ms. J.'s documents received on March 8, 2011, at pg. 2 (emphasis added).

13 Ms. J.'s documents received on March 8, 2011, at pg. 1.

14 Finding Mr. F. more credible is not necessarily the end of the inquiry. One statement of Ms. J.'s –that she and Mr. F. had a lease in which she rented the trailer from him in 2010 – leads one to wonder if the lease was a pretense for asserting she and Mr. F. were not "together" so she could obtain public assistance benefits while they cohabitated and he was employed. Mr. F. acknowledged he knew she was receiving public assistance and claimed he wanted her to "go off" it, so naturally the question arises whether he knowingly cooperated in her obtaining public assistance while they lived together. Of course, it is also possible that Ms. J. applied for public assistance in May 2010 and received an automatic 4-month grant that was not renewed. That would tend to lessen the suggestion that Ms. J. improperly received benefits. The evidence is not sufficient to make a finding either way.

mother both testified that the parties became engaged just before the hearing, but Mr. F. should not be relieved from his support obligation until he provides sufficient proof that he and H. are once again living in the same household. CSSD's caseworker will have to make that determination because, although he asserted they were engaged, Mr. F. had not submitted any proof the parties had reunited and Ms. J. had not confirmed his testimony.[15]

One final issue must be addressed. Mr. F. testified at the hearing that he had just given Ms. J. a direct child support payment in the amount of $1,600, which she verified in a written statement received by CSSD on March 2, 2011.[16] This issue must also be referred to the parties' caseworker in order to confirm whether the payment was made and, if so, what specific time periods it was meant to address. Because the record has closed in the administrative appeal, the caseworker, or the appropriate entity in CSSD, is in the better position to make that determination. The issuance of this child support decision is not an impediment to the caseworker resolving that issue.

IV. Conclusion

Mr. F. proved by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. F. is not liable for support from May 2010 through December 2010 because he and Ms. J. and H. cohabitated during that time and he was thus a custodial parent.

Mr. F. is liable for support from January 2011 forward in the amount of $255 per month, as calculated by CSSD and which he did not oppose. His support obligation should continue until such time as he provides sufficient proof that he and Ms. J. and H. are once again living in the same household.

Two issues are referred to the parties' caseworker: whether Mr. F. made a direct payment to Ms. J. of $1,600, and whether the parties have reunited and Mr. F.'s ongoing support should be suspended.

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[15] One reason for referring this issue to CSSD is that after the hearing Ms. J. submitted a copy of a domestic violence order she obtained against Mr. F. on February 14, 2011. Ms. J.'s documents at pgs. 10-15.

[16] Exh. 8.

V. Child Support Order

- Mr. F. is not liable for support from May 2010 through December 2010 because he and Ms. J. and H. cohabitated during that time and he was thus a custodial parent;
- Mr. F. is liable for ongoing support in the amount of $255 per month, effective January 1, 2011, forward;
- Two issues are referred to the parties' caseworker, or the appropriate entity in CSSD for this determination – whether Mr. F. made a direct payment to Ms. J. of $1,600, and whether the parties have reunited and Mr. F.'s ongoing support should be suspended;
- All other provisions of the Amended Administrative Child and Medical Support Order dated December 30, 2010, remain in full force and effect.

DATED this 29th day of March, 2011.

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 15th day of April, 2011.

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

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