

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

IN THE MATTER OF: )

A E. S )

---

OAH No. 11-0112-CSS

CSSD No. 001167218

**DECISION AND ORDER**

**I. Introduction**

The obligor, A E. S, appealed a denial by the Child Support Services Division (CSSD) to review an Administrative Child Support and Medical Support Order that the agency issued in her case on November 30, 2010. The obligee children are P, 17, and A, 15. The other parent is C L. S.

The hearing was held on April 18, 2011 and May 3, 2011. Neither party attended the first session but both participated in the second session of the hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, Ms. S's child support obligation is set at \$663 per month for P and A from January 2010 through May 2010, based on Mr. S having primary physical custody. Effective June 1, 2010, the parties have exercised divided custody of the children. Mr. S's income was slightly higher than Ms. S's in 2010, so his support obligation would be approximately \$30.50 per month pursuant to the divided custody formula. Therefore, her child support obligation is suspended as of June 1, 2010. Mr. S cannot be assessed child support in this case.

**II. Facts**

*A. Procedural Background*

Mr. S began receiving public assistance benefits for P and A in January 2010.<sup>1</sup> In April 2010, CSSD requested income information from Ms. S.<sup>2</sup> On November 30, 2010, CSSD issued an Administrative Child Support and Medical Support Order that set her ongoing support at \$1,102 per month, with arrears of \$7,872 for the period from January 2010 through December

---

<sup>1</sup> Exh. 2 at pg. 9.

<sup>2</sup> Exh. 1.

2010.<sup>3</sup> Ms. S requested an administrative review on December 9, 2010, but it was denied as untimely by CSSD.<sup>4</sup> Ms. S filed an appeal and submitted affidavits regarding divided custody on March 22, 2011.<sup>5</sup> During the hearing, the parties agreed that the appeal process and decision in this case would resolve the issue of her support obligation without having to be remanded to CSSD for an administrative review.

*B. Material Facts*

This case originally involved primary custody but has since then evolved into a divided custody case. Ms. S lives in Anchorage; Mr. S is in no name city. This action arose because Mr. S began receiving public assistance benefits for the parties' children, P and A, in January 2010.<sup>6</sup> However, as of May 2010, Ms. S assumed custody of the parties' younger child, A, while P stayed with Mr. S. At the time of the hearing, Ms. S testified that P would be spending the summer with her in Anchorage.

Both parties have been employed intermittently during the time periods involved in this appeal. Ms. S previously was a seasonal employee for no name.<sup>7</sup> She was unemployed from September 2010 through February 2011, at which time she began working for a catering company earning \$15 per hour. In 2010, Ms. S earned \$33,319.50 from employment.<sup>8</sup> Her total taxable income for the year was \$35,706.15, which includes the permanent fund dividend and Native dividends totaling \$1,105.65.<sup>9</sup> A child support calculation for two children is \$663 per month in 2010.<sup>10</sup>

Mr. S was unemployed when this case arose in January 2010, which is why he began receiving public assistance benefits for the children. He did return to work soon thereafter, but broke his ankle in mid-April and returned to public assistance benefits after that. In 2010, he had earnings of \$11,034.38 from employment, in addition to the permanent fund dividend, unemployment benefits of \$9,407; and Native corporation dividends of \$14,000.<sup>11</sup> Were he

---

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exhs. 4-6.

<sup>6</sup> Exh. 2 at pg. 9.

<sup>7</sup> Exh. 7.

<sup>8</sup> Exh. 7 at pg. 1.

<sup>9</sup> Exh. 9 at pg. 1; Exh. 8 at pg. 2.

<sup>10</sup> Exh. 9 at pg. 1.

<sup>11</sup> Exh. 7 at pgs. 3-4; Exh. 9 at pg. 2.

paying child support for two children in 2010, his support obligation would equal \$704 per month.<sup>12</sup>

In a divided custody scenario comparing the parties' incomes for 2010, Mr. S would be obligated to pay Ms. S \$30.50 per month.<sup>13</sup>

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>14</sup> The parent is liable to reimburse the state for public assistance benefits paid on behalf of his or her child(ren).<sup>15</sup> CSSD collects support from the date public assistance or foster care was initiated.<sup>16</sup> In this case, Mr. S received public assistance benefits on behalf of P and A beginning in January 2010. Thus, that is the month Ms. S's child support obligation for the children should begin. Her support obligation is designed to reimburse the state for those public assistance benefits.

If the parents exercise divided custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in a primary or shared custody situation. The child support award is calculated first by determining what each parent would owe the other in a primary custody situation, then by offsetting those amounts pursuant to the divided custody mathematical formula.<sup>17</sup> The second step, because divided custody is an "unusual circumstance," is to determine whether the amounts derived from the mathematical formula should be varied under Civil Rule 90.3(c)(1).<sup>18</sup>

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." CSSD has correctly ascertained Ms. S's 2010 income was \$35,706.15. Based on that income figure CSSD determined that her primary custody child support for 2010 would be \$663 per month for two children. Because Mr. S had primary custody of the children from January 2010 through May 2010, Ms. S is obligated to pay this amount for those months.

---

<sup>12</sup> Exh. 9 at pg. 2.

<sup>13</sup> Exh. 9 at pg. 3.

<sup>14</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>15</sup> AS 25.27.120(a).

<sup>16</sup> 15 AAC 125.105(a)(1)-(2).

<sup>17</sup> Civil Rule 90.3(b)(2).

<sup>18</sup> *Id.*

However, Ms. S's support obligation is radically different as of June 2010, the first month during which the parties exercised divided custody of the children. The parties' respective child support obligations are determined according to the divided custody formula.

CSSD correctly ascertained Mr. S's 2010 income was \$35,722.38, and that his primary custody support obligation for P and A would be \$704 per month. Inserting this figure into a divided custody calculation along with Ms. S's primary custody calculation of \$663 per month results in Mr. S being obligated to pay child support. The monthly amount is only \$30.50, which would be owed by Mr. S if this were his child support case.<sup>19</sup> However, this appeal involves only Ms. S's child support obligation, so she is not obligated to pay child support as of June 1, 2010, the first full month the parties began exercising divided custody of the children.

The final part of determining a divided custody child support obligation involves making a determination whether the final child support amount should be varied. This requires a showing that "good cause" exists for the variance. In order to establish good cause, it must be proven by clear and convincing evidence that "manifest injustice would result if the support award were not varied."<sup>20</sup> All the relevant evidence must be considered, including the circumstances of both parties and all of the children.<sup>21</sup>

Based on the totality of circumstances, this case does not present "good cause" for a variance from the divided custody support amount calculated from the parties' actual income figures. Both Mr. S and Ms. S made it clear during the hearing that they do not desire to receive child support from each other. Furthermore, Mr. S indicated that when necessary Ms. S sends him food such as vegetables, meat and other bulk grocery items she purchases in Anchorage. Thus, it appears that this case does not involve "manifest injustice" such that the \$30.50 per month obligation should be reversed and Ms. S's obligation invoked again. The parties are working together and cooperating to jointly support their children. Leaving Ms. S's support obligation through CSSD suspended as of June 2010 is consistent with the arrangements they have made and that are working for them.

---

<sup>19</sup> Exh. 9 at pg. 3.

<sup>20</sup> Civil Rule 90.3(c).

<sup>21</sup> Civil Rule 90.3, Commentary VI.E.1.

#### **IV. Conclusion**

Ms. S met her burden of proving by a preponderance of the evidence that CSSD's Administrative Child Support and Medical Support Order was incorrect. Her child support should be set at \$663 per month for January 2010 through May 2010. The parties began exercising divided custody of P and A during May 2010, so their respective support obligations as of June 2010 must be analyzed using the divided custody formula. Because the parties' incomes were nearly identical in 2010, with Mr. S's being slightly higher than Ms. S's, the divided custody formula results in Mr. S having a modest support obligation of \$30.50 per month as of June 2010. However, Mr. S cannot be charged support in this case; either CSSD or Ms. S would have to initiate a child support establishment case against him. Ms. S's support obligation should be suspended as of June 2010.

#### **V. Child Support Order**

- Ms. S is liable for support for P and A of \$663 per month for the period from January 2010 through May 2010;
- Ms. S's child support obligation for the children is suspended as of June 1, 2010 because the parties began exercising divided custody at that time and the divided custody formula indicates if this were Mr. S's case, he would be liable for support of \$30.50 per month as of June 2010;
- All other provisions of the Administrative Child Support and Medical Support Order dated November 30, 2010, remain in full force and effect.

DATED this 23<sup>rd</sup> day of June, 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 11<sup>th</sup> day of July, 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.]