

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

IN THE MATTER OF: )

J. E. C.-D. )

---

OAH No. 11-0114-CSS

CSSD No. 001157951

**DECISION AND ORDER**

**I. Introduction**

The custodian of record, S. B. B., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. C.-D.'s case on March 4, 2011. The obligee children are Y. and R.

The hearing was held on April 18<sup>th</sup> and July 11<sup>th</sup> of 2011. Both parties appeared for the first hearing; neither appeared for the supplemental hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on careful consideration of all the evidence, Mr. C.-D.'s child support is modified to \$96.97 per month for two children, effective February 1, 2011, and ongoing. Mr. C.-D. does not owe additional arrears for support for R. prior to the effective date of the modification. CSSD's Modified Administrative Child Support and Medical Support Order dated March 4, 2011, is affirmed in all other respects.

**II. Facts**

*A. History*

Mr. C.-D.'s child support obligation for Y. was set at \$266 per month in August 2009.<sup>1</sup> Ms. B. withdrew from services in June 2010,<sup>2</sup> but then reapplied for services for both children in August 2010. Paternity of R. was established,<sup>3</sup> after which CSSD issued a notice initiating a modification review so as to add him to Mr. C.-D.'s child support order for Y.<sup>4</sup> On March 4, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C.-D.'s child support to \$321 per month for both children, effective February 1,

---

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

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

<sup>3</sup> Exhs. 4-5.

<sup>4</sup> Exhs. 6-7.

2011, and added arrears of \$498 for R. for the period from August 2010 through January 2011.<sup>5</sup> Ms. B. appealed on March 24, 2011, claiming essentially that the assessment of arrears was incorrect.<sup>6</sup>

*B. Material Facts*

Mr. C.-D. was laid off from his primary job in early 2010. He remains employed at a large electronics retailer on a part-time basis. He is living with his mother and does not pay rent. His primary expenses are \$175 per month for a car payment; \$98 for car insurance; \$150 for gasoline; \$150 for groceries; and \$75 for a telephone. His monthly take-home pay is about \$1,100.

Ms. B. works at a daycare center, where she is a pre-kindergarten teacher. She has been there over a year and brings home about \$1,400 per month.

The parties share custody of Y. and R. They both presented testimony at the hearing as to their agreement and after the first hearing, Mr. C.-D. submitted a typical calendar for their arrangement.<sup>7</sup> He has both children for evening visitation every other day and at the end of the evening one of the children stays overnight with him. Occasionally, both children stay overnight. CSSD reviewed his calendar and from it estimated that he exercised approximately 39% shared physical custody.<sup>8</sup> Using that figure, CSSD estimated that Mr. C.-D. would not owe additional arrears for R. and that the modified ongoing child support amount as of February 1, 2011, would be \$96.97 per month. Ms. B. was given the opportunity to respond to Mr. C.-D.'s calendar and CSSD's calculations but she chose not to comment.<sup>9</sup>

**III. Discussion**

As the person who filed the appeal in this case, Ms. B. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>10</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> If the newly calculated child support amount is more than a 15%

---

<sup>5</sup> Exh. 8.

<sup>6</sup> Exh. 5.

<sup>7</sup> Exh. 11.

<sup>8</sup> Post-Hearing Brief dated May 16, 2011.

<sup>9</sup> See Order for Supplemental Hearing dated July 1, 2011. Neither party appeared.

change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. Adding other children to a child support order is a material change in circumstances that justifies modifying the support order even though the newly calculated support amount may not be more than a 15% change.<sup>12</sup>

CSSD’s regulations state that a modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>13</sup> The notice was issued in this case on January 3, 2011, so the modified child support amount for two children is effective as of February 1, 2011. However, a portion of this case involves the *establishment* of Mr. C.-D.’s obligation to support R. beginning as of August 2010, when Ms. B. filed for child support services for both children.<sup>14</sup> Thus, Mr. C.-D. initially was charged the one-child add-on amount of \$83 per month, which increased his support obligation to \$349 per month from August 2010 through January 2011.<sup>15</sup> The next month – February 2011 – is the effective date of the modification.

When parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.<sup>[16]</sup>

Thirty percent (30%) of the year is 110 days. In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.<sup>17</sup>

If there is no court order regarding custody, a finding of shared custody under Civil Rule 90.3(f)(1) should be based on a written agreement, but the parties to child support actions rarely have one. Thus, the administrative law judge must make findings of fact regarding whether

---

10 15 AAC 05.030(h).

11 AS 25.27.190(e).

12 See 15 AAC 125.321(b)(2)(B).

13 15 AAC 125.321(d).

14 See CSSD’s Submission to Record at pg. 1.

15 15 AAC 125.105(a)(1). Adding \$83 to Mr. C.-D.’s support order for \$266 equals \$349 per month.

16 Civil Rule 90.3(f)(1).

17 Civil Rule 90.3, Commentary V.A.

shared custody exists and, if so, what percentage of shared custody each party exercises. The parent asserting that they share physical custody, in this case, Mr. C.-D., has the burden of proof by a preponderance of the evidence.<sup>18</sup>

The obligor met his burden of proof on the shared custody issue. Both parties gave testimony at the hearing about their arrangement and Mr. C.-D. submitted a typical one-month calendar of his overnights with Y. and R. that Ms. B. did not dispute.

Thus, the claim of shared custody is accepted and adopted as a finding of fact. CSSD calculated Mr. C.-D.'s modified child support amount based on the parties' respective income figures – the formula for shared custody is somewhat different than the one for primary custody. The resulting calculations are due to the fact that Mr. C.-D.'s income is lower than it was when the order for Y. was established. Mr. C.-D. does not owe any arrears for the time period prior to the modification and his modified ongoing support is calculated at \$96.97 per month, effective February 1, 2011, and ongoing.

#### **IV. Conclusion**

The parties now have two children and CSSD initiated a modification review to adjust Mr. C.-D.'s ongoing child support order. He and Ms. B. are exercising shared custody of the children and his child support obligation has been correctly calculated at \$96.97 per month for two children, effective February 1, 2011, and ongoing. Mr. C.-D. does not owe any additional arrears for R. prior to that date because his income is lower than it was when his support obligation for Y. was first established. CSSD's post-hearing calculation should be adopted.

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

- Mr. C.-D. is not liable for arrears for R. prior to February 1, 2011;
- Mr. C.-D. is liable for modified ongoing support of \$96.97 per month for two children, effective February 1, 2011, and ongoing;<sup>19</sup>

---

<sup>18</sup> See 2 AAC 64.290(e).

<sup>19</sup> Ms. B. has withdrawn from services as of July 13, 2011. CSSD will process her withdrawal and determine the effect on Mr. C.-D.'s payment account. In the event she reapplies for services CSSD will be enforcing the modified order unless and until a subsequent petition for modification is filed.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 4, 2011, remain in full force and effect.

DATED this 22<sup>nd</sup> day of July, 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 8th day of August, 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.]