

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

IN THE MATTER OF: )  
 )  
 B B ) OAH No. 11-0157-CSS  
 ) CSSD No. 001151550  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor B J. B's appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on March 10, 2011. The obligee child is Z, who is 3 years old. The other party is M L. T.

The formal hearing was held on May 5, 2011. Mr. B did not participate;<sup>1</sup> the custodian appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. B's child support is set at \$226 per month for 2008; \$137 per month for 2009; and \$355 per month for 2010 and ongoing. He is not liable for support from December 2007 through June 2008.

**II. Facts**

*A. Proceedings*

The obligee child Z began receiving public assistance benefits in December 2007.<sup>2</sup> CSSD initiated a paternity action on July 26, 2010 and after genetic testing, the agency established Mr. B's paternity of Z on December 14, 2010.<sup>3</sup> On December 15, 2010, CSSD issued an Administrative Child Support and Medical Support Order.<sup>4</sup> He requested an administrative review and provided information.<sup>5</sup> On March 10, 2011, CSSD issued an Administrative Review Decision affirming its earlier order that set Mr. B's ongoing child support

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<sup>1</sup> Telephone calls were placed to four telephone numbers listed as possible contact numbers for Mr. B, including the one he provided on his appeal form dated April 15, 2011. Exh. 11. Three of the numbers were no longer in service; the last one was for a fax machine.

<sup>2</sup> Exh. 7 at pg. 12.

<sup>3</sup> Exhs. 2-6.

<sup>4</sup> Exh. 7.

<sup>5</sup> Exhs. 8-9.

at \$300 per month, with arrears of \$9,719 for the period from December 2007 through December 2010.<sup>6</sup> Mr. B filed an appeal on April 18, 2011, asserting that Ms. T had previously testified he lived with her so she could be his third party custodian.<sup>7</sup>

On April 21, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice of the date and time for the hearing by certified mail. Mr. B's green card indicating service of the notice was not returned. On May 19, 2011, his certified notice was returned and marked unclaimed by the U. S. Postal Service after three attempts at service.

Before the hearing was to begin, four telephone calls were placed to all the possible contact numbers in Mr. B's file, including the one he provided on his appeal form, but none were answered. Three of them were out of service and the fourth was for a facsimile machine. Because notice of the hearing had been sent to Mr. B by certified mail to his last-known address, service of the notice of hearing was found to be effective and the hearing was conducted without his participation.<sup>8</sup>

*B. Material Facts*

1. Notice of the date and time for the hearing was sent by certified mail to Mr. B at his last-known address, but it was returned to the OAH by the U.S. Postal Service marked "unclaimed;"

2. Mr. B did not appear for the hearing, nor has he contacted the OAH;

3. Mr. B met his burden of proving by a preponderance of the evidence that he and Ms. T cohabitated through June 2008, so Mr. B is not liable for support for the months of December 2007 through June 2008;

4. Mr. B's 2008 income was \$15,454.75;<sup>9</sup> this income figure yields a child support amount of \$226 per month, beginning in July 2008;<sup>10</sup>

5. Mr. B's 2009 income was \$8,945;<sup>11</sup> this income figure yields a child support amount of \$137 per month;<sup>12</sup>

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<sup>6</sup> Exh. 10.

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

<sup>8</sup> See 15 AAC 05.010(c).

<sup>9</sup> Exh. 12 at pg. 1.

<sup>10</sup> Attachment A.

<sup>11</sup> Exh. 4 at pg. 2.

<sup>12</sup> Attachment B.

6. Mr. B's 2010 income was \$25,308;<sup>13</sup> this income figure yields a child support amount of \$355 per month.<sup>14</sup>

### III. Discussion

Mr. B filed an appeal of a child support order and the notice of the date and time set for the hearing was sent to his last-known address. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>15</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 calculated Mr. B's child support from records maintained by the Alaska Department of Labor and Workforce Development (ADOL)<sup>16</sup> and from his tax return for 2009.<sup>17</sup> At the hearing, CSSD indicated that the obligor's income information for two of those calculations were switched and requested recalculations. The ADOL information verified that the income amounts had, indeed, been switched, so the agency's request to have the child support calculations redone was granted. Those corrected calculations are shown in Attachments A-C, and are discussed in the findings of fact, above.

Mr. B's primary issue is that he is not liable for support during the period from December 2007 through June 2008.<sup>18</sup> In support of his claim, three members of Mr. B's family – his sister, mother and father – all submitted sworn affidavits that Mr. B and Ms. T actually lived together until June 2008.<sup>19</sup> The basis for their assertions is that the family visited the parties in Anchorage during that month and witnessed Mr. B and Ms. T living together.<sup>20</sup>

Ms. T attended the hearing by telephone and contested Mr. B's claim that they lived together until June 2008. She maintains they last lived together in April 2007.<sup>21</sup> Ms. T testified

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<sup>13</sup> Exh. 12 at pg. 1.

<sup>14</sup> Attachment C.

<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>16</sup> Exh. 12.

<sup>17</sup> Exh. 4 at pg. 2.

<sup>18</sup> See Mr. B's appeal at Exh. 11.

<sup>19</sup> Exh. 8 at pgs. 3-5.

<sup>20</sup> *Id.*

<sup>21</sup> M T hearing testimony.

that although she signed a 3<sup>rd</sup> party custodial agreement for him to get out of jail, the 3<sup>rd</sup> party documents do not confirm that they lived together, just that she signed for him. Ms. T explained that Mr. B lived at her mother's house and that Ms. T lived in a mother-in-law apartment in the basement of the house, which is why she signed the 3<sup>rd</sup> party release. The custodian agreed to provide additional documentary evidence, but she did not file any documents after the hearing.

The affidavits from Mr. B's family members are credible statements and the most persuasive evidence regarding the issue of the parties' cohabitation. In light of their claim that they visited the cohabitating parties in June 2008, Ms. T's testimony in explanation of why she and Mr. B had the same address is not persuasive. Thus, Mr. B met his burden of proof on this issue and he is not liable for support in this administrative child support action from December 2007 through June 2008.

#### **IV. Conclusion**

Mr. B met his burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect, as required by 15 AAC 05.030(h). Mr. B's child support is now correctly calculated at \$226 per month for 2008; \$137 per month for 2009; and \$355 per month for 2010 and ongoing. He is not liable for support from December 2007 through June 2008.

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

- Mr. B is not liable for child support from December 2007 through June 2008;
- Mr. B is liable for support for Z in the amount of \$226 per month for July 2008 through December 2008; \$137 per month for 2009; and \$355 per month for 2010 and ongoing;
- All other provisions of CSSD's Administrative Review Decision dated March 10, 2011, remain in full force and effect.

DATED this 5<sup>th</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 22<sup>nd</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.]