

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

IN THE MATTER OF:	)	
	)	
T K. K	)	OAH No. 11-0228-CSS
_____	)	CSSD Case No. 001171549

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of T K. K for the support of Z K. The custodian of record is J L. C.

On May 11, 2011, the Child Support Services Division issued an amended administrative child support order establishing an ongoing support obligation in the amount of \$40 per month, with arrears in the amount of \$1,370 for the period from October 1, 2010, through May 31, 2011.<sup>1</sup>

Ms. C filed an appeal and requested an administrative hearing. The Office of Administrative Hearings conducted a telephonic hearing on June 29, 2011. Erinn Brian represented the division. Both Mr. K and Ms. C participated.

The only issue in dispute at the hearing was the status of physical custody in the month of March, 2011. The preponderance of the evidence is that in March, Mr. K did not have physical custody for enough time to qualify for a shared custody calculation. The amended administrative support order is accordingly adjusted.

**II. Discussion**

T K and J L. C are the parents of one child, Z K. The couple has never been married; neither has any other children.

Mr. K and Ms. C separated in October, 2010. Initially, Z lived full-time with Ms. C. However, the parties agreed to a custody arrangement beginning in 2011, under which Z would spend three nights (Friday-Sunday) with Mr. K, every other week. Beginning in March, 2011, they agreed to a custody arrangement under which Z would spend alternate weeks with each parent. However, that arrangement was not actually put into effect until April.

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<sup>1</sup> Exhibit 2.

Mr. K's total income in 2010 was \$27,681, consisting of wages (\$24,253), unemployment compensation (\$2,147) and his Alaska Permanent Fund dividend (\$1,281).<sup>2</sup> His anticipated total income in 2011 is within 15% of that amount.<sup>3</sup> Ms. C's anticipated total income in 2011, based on her most recent four quarters, is \$25,161, including wages (\$23,880) and her Alaska Permanent Fund dividend (\$1,281).<sup>4</sup>

### **III. Discussion**

The division establishes a child support obligation based upon "the expected actual annual income that the parent will earn or receive when the child support award is to be paid."<sup>5</sup> When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.<sup>6</sup>

#### **A. Income**

In this case, there is no dispute regarding the parties' income. Both agreed that the Division's exhibits showing their respective incomes were correct.

#### **B. Presumptive Support Obligation**

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,<sup>7</sup> that is, total income after allowable deductions.<sup>8</sup> In a shared custody situation, child support is determined by first calculating the basic child support obligation of both parents (treating both as if the other parent were the sole custodian), adjusting the basic obligation to reflect the percentage of time that the child spends with each parent, and then multiplying the amount due by 1.5 in order to compensate for the increased cost of providing support that generally occurs when custody is shared.<sup>9</sup>

When there is no custody order in effect, a parent's child support obligation is determined based upon actual physical custody. In this case, the Division's amended support order provided a shared custody calculation beginning in January, 2011. On appeal, Ms. C asserted that the shared custody arrangement did not go into effect until April, 2011.

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<sup>2</sup> Exhibit 5, p. 8.

<sup>3</sup> Exhibit 5, p. 9.

<sup>4</sup> Exhibit 5, p. 10.

<sup>5</sup> 15 AAC 125.030(a).

<sup>6</sup> Duffus v. Duffus, 72 P.3<sup>rd</sup> 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3<sup>rd</sup> 52, 56 (Alaska 2001).

<sup>7</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>8</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

<sup>9</sup> 15 AAC 125.070(b); Civil Rule 90.3(b). See Civil Rule 90.3, Commentary at V(B).

At the hearing, Mr. K did not dispute that the parties did not have shared custody in January and February. The only issue raised on appeal by Ms. C that was disputed by Mr. K at the hearing was the state of custody during the month of March, 2011.

Mr. K testified that the alternate week arrangement was put into practice in March; Ms. C testified that it was put into practice in April. Ms. C's testimony is supported by her written letter in the record, dated April 18. The preponderance of the evidence thus supports Ms. C's testimony.

#### **IV. Conclusion**

The parties implemented a shared custody agreement beginning in April, 2011. The amended child support order should be adjusted to reflect a primary custody calculation for the months of January through March, 2011.

#### **CHILD SUPPORT ORDER**

The Amended Child Support and Medical Support Order dated May 11, 2011, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated May 11, 2011, is **AFFIRMED**:

1. Mr. K's arrears are set at \$390 per month for the period from October 1, 2010, through March 31, 2011, and at \$40 per month effective April 1, 2011.
2. Ongoing support is set at \$40 per month, effective August 1, 2011.

DATED: July 25, 2011.

*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.

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 12<sup>th</sup> day of August, 2011.

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

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