

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

IN THE MATTER OF: )

D L. E )

OAH No. 12-0093-CSS

CSSD No. 001114468

**DECISION AND ORDER**

**I. Introduction**

The obligor, D L. E, appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on March 27, 2012. The obligee children are A, 10, and B, 8. The other party is L M. W.

The formal hearing was held on May 3, 2012. Both parties appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. E's child support is modified to \$1,219 per month for two children, effective March 1, 2012, and ongoing.

**II. Facts**

*A. Procedural History*

Mr. E's child support obligation for A and B was set at \$626 per month in 2006.<sup>1</sup> On December 19, 2011, Ms. W initiated a modification review of the order.<sup>2</sup> On February 15, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Both parties provided income and other information for the review.<sup>4</sup> On March 27, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. E's ongoing support to \$1,219 per month for two children, effective March 1, 2012.<sup>5</sup> Mr. E appealed on April 12, 2012.<sup>6</sup>

*B. Material Facts*

Mr. E and Ms. W are the parents of A, 10, and B, 8. The children currently live full-time with Ms. W. Previously, Mr. E exercised visitation with the girls for approximately one week

---

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

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

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

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

<sup>5</sup> Exh. 7.

<sup>6</sup> Exh. 8.

and one weekend per month. In March 2012, the parties began exercising 50/50 custody of the children pursuant to an agreement they were negotiating in private mediation. The mediation process broke down, and as a result, Mr. E stopped exercising his visitation periods with A and B in mid-April. Thus, the total amount of time Mr. E and Ms. W shared 50/50 custody was only six weeks in duration.

Mr. E is employed by No Name., Inc., in Fairbanks. In 2011, he earned \$67,963.70 from No Name. and two other employers.<sup>7</sup> His paystub for the period ending March 11, 2012, reflects year-to-date earnings of \$16,107.37.<sup>8</sup> CSSD used this paystub to estimate Mr. E's total income for 2012 at \$76,143.93.<sup>9</sup> At the hearing, Mr. E agreed that the annual income CSSD projected for him was correct.

The income that CSSD estimated for Mr. E, when inserted into the online child support calculator,<sup>10</sup> yields a support amount of \$1,219 per month for two children and \$903 per month for one child.<sup>11</sup>

### **III. Discussion**

#### *A. Controlling Law*

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>12</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. Mr. E's child support has been \$626 per month since 2006. Thus, a child support calculation of \$720 or more would be sufficient to warrant modification in this case.<sup>13</sup>

---

<sup>7</sup> Exh. 9.

<sup>8</sup> Exh. 5 at pg. 3.

<sup>9</sup> Exh. 7 at pg. 8.

<sup>10</sup> <http://www.childsupport.alaska.gov/default.asp>. The link to the calculator is on the right-hand side of the page.

<sup>11</sup> Exh. 7 at pg. 8.

<sup>12</sup> AS 25.27.190(e).

<sup>13</sup> \$626 x 1.15 = \$719.90.

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.<sup>14</sup> In this case, the notice was issued on February 15, 2012, so a modification would be effective as of March 1, 2012.<sup>15</sup>

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.<sup>16</sup> Mr. E filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>17</sup>

*B. Shared Custody*

Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than where one parent has primary custody. In general, and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support in a shared custody situation would have a somewhat lower monthly support amount than where one parent exercises 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>[18]</sup>

In order for a visitation day to count toward the required 30% of the year, the children must stay overnight with the respective parent.<sup>19</sup> One year is equal to 365 days, so 30% of the year equals 110 overnights.<sup>20</sup> This is the minimum number of overnights needed on an annual basis to reach the threshold definition of shared custody.

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. In the absence of a written agreement, the parties' actual periods of overnight custody

---

14 15 AAC 125.321(d).  
15 Exh. 3.  
16 15 AAC 05.030(h).  
17 2 AAC 64.290(e).  
18 Civil Rule 90.3(f)(1).  
19 Civil Rule 90.3, Commentary V.A.  
20  $365 \times .30 = 109.5$  (rounded to 110).

determine whether shared custody exists and, if so, what percentage of shared custody each party exercises.

The parent asserting shared custody has the burden of proof by a preponderance of the evidence.<sup>21</sup> Mr. E and Ms. W did not execute a written agreement for shared custody, so Mr. E must prove that he has had the children at least 30% of the time, and on an ongoing basis, in order to meet the minimum requirements for a shared custody calculation.

Based on all of the evidence presented, Mr. E did not meet his burden of proving he exercises shared custody of A and B. Mr. E acknowledged, and Ms. W agreed, that the period of time during which they shared custody of the children, even though it was on a 50/50 basis, lasted only six weeks. Moreover, they stopped the 50/50 exchange in mid-April, and by the time of the hearing had not reinstated it. The parties admitted they have issues to resolve before they once again start exercising shared custody of A and B. As soon as they do, however, and their arrangement is stable, either one of them would be able to initiate another modification review in order to have Mr. E's child support obligation adjusted to reflect shared custody.

#### *C. Child Support Calculation*

Mr. E testified that the income information CSSD used for the child support calculation was correct. Therefore, CSSD correctly calculated his modified child support at \$1,219 per month for two children, or \$903 per month for one child.

#### **IV. Conclusion**

Mr. E did not meet his burden of proving the Modified Administrative Child Support and Medical Support Order was incorrect. He and Ms. W do not currently exercise shared custody of A and B, so his child support should be calculated using the primary custody formula. CSSD correctly calculated his child support at \$1,219 per month for two children (\$903 per month for one child), effective March 1, 2012. This calculation should be adopted.

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

- Mr. E is liable for child support for A and B in the amount of \$1,219 per month for two children (\$903 per month for one child), effective March 1, 2012, and ongoing;

---

<sup>21</sup> See 2 AAC 64.290(e).

- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated March 27, 2012, remain in full force and effect.

DATED this 23<sup>rd</sup> day of May, 2012.

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 June, 2012.

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

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